COMPETING FOR CONTRACTOR SUPPORT SERVICES

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NAVAL POSTGRADUATE SCHOOL
Monterey, California

THESIS

COMPETING FOR CONTRACTOR
SUPPORT SERVICES

by

Jonathan Jacques Hein

December 1979

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Over the past few years, heightened management attention to the increased complexity and sophistication of contract requirements and of weapon systems acquisition has intensified the number, frequency, extent and complexity of the studies, analyses, and other documentation required in support of the acquisition process. During this same time

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period, personnel cuts and staffing constraints have resulted in a decrease in appropriate government in-house expertise. In this environment of increasing requirements and decreasing resources, greater reliance is being placed on industry to provide the expertise the government lacks.

Concurrent with this demand for increased use of contractor support services is the Federal policy of promoting effective competition for all goods and services.

It is the objective of this thesis to assist the contracting officer in understanding the problems inherent with competing for contractor support services and to offer recommendations that improve the contracting process to increase competition for these services.

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Competing for Contractor Support Services

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ABSTRACT

Over the past few years, heightened management attention to the increased complexity and sophistication of contract requirements and of weapon systems acquisition has intensified the number, frequency, extent and complexity of the studies, analyses, and other documentation required in support of the acquisition process. During this same time period, personnel cuts and staffing constraints have resulted in a decrease in appropriate government in-house expertise. In this environment of increasing requirements and decreasing resources, greater reliance is being placed on industry to provide the expertise the government lacks.

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I. INTRODUCTION

A. GENERAL

Over the past few years, heightened management attention to the increased complexity and sophistication of contract requirements and of weapon systems acquisition has intensified the number, frequency, extent and complexity of the studies, analyses, and other documentation required in support of the acquisition process. During this same time period, personnel cuts and staffing constraints have resulted in a decrease in appropriate government in-house expertise. In this environment of increasing requirements and decreasing resources, greater reliance is being placed on industry to provide the expertise the Government lacks.

Concurrent with this demand for increased use of contractor support services is the Federal policy of promoting effective competition for all goods and services.

It is the objective of this thesis to assist the contracting officer in understanding the problems inherent with contractor support services and the difficulties associated with competing for these services. The research effort gleaned information from all "walks of life" within the contractor support services arena. Differing views from contracting officers, customers, engineers, line and staff managers, lawyers, policy makers and support service contractors were examined, consolidated, analyzed and presented.

Through this iterative process, an attempt will be made to satisfactorily answer the central research question of this thesis, "Is it feasible for the contracting officer to improve the extent of competition of contractor support services?"

B. SCOPE AND ASSUMPTIONS

The scope of this effort is limited to the discussions of contracting out for contractor support services from the time the contracting officer is aware of the need to contract out, i.e., after the decision has been made by line management to contract out, until award. Contract administration, while an integral part of the success of contractor support services, is beyond the scope of this effort as is contracting for and implementation of the Commercial/Industrial (C/I) Activities Program under the revised OMB A-76. Also deleted from this effort are Federal Contract Research Centers (FCRCs) and Architect/Engineer (A&E) contracting. These areas offer fertile ground for future research and study.

For the purposes of this thesis, it is assumed that the reader has a more than casual understanding of Department of Defense contracting.

C. METHODOLOGY

Primary research material was collected from discussions with a myriad of personnel involved in the service contracting arena, ranging from the front line customers of contractor support services at the field activity level to

the policy makers of the Office of Federal Procurement Policy. Within the Department of Defense, field trips were made to the David W. Taylor Naval Research and Development Center, Bethesda Md., and the Naval Weapons Laboratory, White Oak, Md., for interviews with government engineers, line management, and contracting officers. Interviews with policy makers and contracting officers were held at the Naval Supply Systems Command, the Naval Regional Contracting Office, Washington, D.C., the Naval Supply Center, Oakland, Ca., the Air Force Systems Command, and the Office of Federal Procurement Policy. For a non-DOD flavor, interviews were held with the Chief Counsel, Office of Personal Management (formerly the Civil Service Commission) and contracting officers with the National Aeronautics and Space Administration. For a perspective of the contractor, interviews were held with management personnel from Mantech of New Jersey Corporation (Washington Corporate Office), and Operations Research, Inc., Silver Springs, Md.

Telephone discussions with contracting personnel at the Air University, Maxwell Air Force Base, the Air Force Space and Missle Systems Organization, the Army Procurement Research Office, and the Naval Weapons Laboratory, Dahlgren, Va., also provided input to this research effort.

Secondary research material included a comprehensive search of the literature base for applicable studies and articles. Information was obtained from the library of the Naval Postgraduate School, the Defense Logistics Information

Center, Fort Lee, Virginia, the library of the Federal Procurement Institute, Washington, D.C., the Air University, Maxwell Air Force Base, and the legal library at the Naval Material Command.

D. FRAMEWORK

10 U.S.C. 52304 (a) states that:

> Purchases of and contracts for property or services... shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances.

Source selection is made to the lowest responsive, responsible bidder. Of course, definitive specifications are a requirement for use of the IFB method. However, most contractor support service contractrs are awarded by negotiation since they often fit one of the seventeen statutory exemptions from formal advertising. DAR 3-210 explains the circumstances in which it is not practicable to secure competition by formal advertising and includes:

> When it is impossible to draft for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services.

Where a procurement is to be negotiated rather than formally advertised, appropriate determinations and findings (D&F) that the procurement falls within one of the 17 exceptions are required. This negotiated contracting process is a much more flexible and complex process than the formal advertising method. Because the process is multi-faceted and does not result in the selection of the lowest sealed bid, it requires the exercise of more discretion, judgement

and professionalism on the part of contracting officers. The issues discussed in this thesis pertain to the negotiation method rather than to the formally advertised method of contracting.

E. CONTRACTING PROCESS

For the purposes of this thesis the contracting process includes the following phases:

I Pre-award Phase
   a) Planning Phase
   b) Source Solicitation Phase
   c) Source Evaluation Phase
   d) Negotiation/Source Selection Phase
II Award Phase
III Post-award Phase

The thrust of this thesis deals primarily with the pre-award phase in competing for contractor support services. Issues discussed in this research effort applicable to the pre-award phase include a working definition of effective competition and other terms, the statement of work, evaluation criteria, and selection of contract types. Also discussed are the problems associated with the Service Contract Act, the personal versus nonpersonal services dilemma (including a brief review of the volatile legal history of contractor support services), and contracting for consultants. While an in-depth discussion of negotiation techniques and competitive ranges are beyond the scope of this effort and will

not be addressed, the proper application of the issues examined herein should be useful negotiation tools. In addition, these parts of the pre-award phase discussed in this thesis form the building blocks of the award and post-award phases.

This thesis will conclude with a chapter on the normative contracting process as it pertains to contracting for contractor support services. Applying the concepts addressed in the preceeding sections, the researcher will delineate what he perceives the optimal contracting process should be in successfully competing for contractor support services.

F. DEFINITIONS

Service Contract

A service contract is defined by the Defense Acquisition Regulation (DAR) 22-101 as a contract which calls directly for a contractor's time and effort rather than for a concrete end item. For purposes of this definition, a report is generally not considered a concrete end item if the primary purpose of the contract is to obtain the contractors time and effort and the report is merely incidental. Service contracts are generally found in areas involving the following categories (DAR 22-101 (b)):

1. Maintenance, overhaul, repair, servicing, rehabilitation, salvage, and modernization or modification of supplies, systems, and equipment.

2. Maintenance, repair, rehabilitation, and modification of real property.

3. Architect-engineering.

4. Expert and consultant services.

5. The services of DOD-sponsored organizations.

6. Installation of equipment obtained under separate contract.

7. Operation of Government-owned equipment, facilities, and systems.

8. Engineering and technical services.

9. Housekeeping and base services.

10. Transportation and related services.

11. Training and education.

12. Medical Services.

13. Photographic, printing, and publication services.

14. Mortuary services.

15. Communications services.

16. Test services.

17. Data processing.

18. Warehousing.

19. Auctioneering.

20. Arbitration.

21. Stevedoring.

22. Research and development.

Categories of Service Contracts

The armed forces generally categorize service contracts as follows:

1. Expert and consultant services. These support services are performed by personnel who are exceptionally qualified, by education or experience, in a particular field to perform some specialized service. OMB 78-11, Guidelines for the Use of Consulting Services, further defines consulting services to mean those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management. In view of the growing concern on the use of these types of services, a separate section in this thesis will be devoted to this area.

2. Contractor Support Services.

These are services of a white collar, professional nature involving performance in support of Navy Programs, such as scientific/technical studies and analysis, test and evaluation support, budgetary/financial analysis, ADP support, reliability and maintainability support, cost analysis, and general management support. The major thrust of this thesis concerns contractor support services.

3. Commercial or Industrial (C/I) Activities Support Services.

These are overhead or program support services which are not essential to the management control of Navy programs. The major thrust of this effort is in the blue collar area such as janitorial, transportation, or general services. However, C/I services may involve efforts similar to those described above as contractor support services. The major difference

between these two types of services is that the C/I activities support services call for contracting out of entire functions while CSS involves the contracting out of a specific effort or task in support of a continuing in-house activity or capability [7:7]. The applications and procedures promulgated in the revised OMB A-76 of March 1979 pertain to the C/I activities program and are not addressed in this thesis.

Personal services versus nonpersonal services

All service contracts are further categorized as either personal services or nonpersonal services. With the exception of Expert and Consultants employed by personnel officers in accordance with the Federal Personnel Manual, personal service contracts are not permitted. Nonpersonal services are an approved resource that may be used in the accomplishment of assigned missions by contracting out for contractor support services (CSS), Commercial or Industrial (C/I) Activities support services, or consultant services procured by contracting officers in accordance with the DAR. The distinction between personal and nonpersonal services is not always clear and many factors are considered in reaching a determination as to whether a particular service, situation, contract, or contract performance is personal or nonpersonal in nature. An indepth discussion of both the legal background and the personal versus nonpersonal services dilemma will be addressed later in this thesis. However, in general, a personal service contract is one in which the contractor or his employees are,

in effect, Government employees. This situation occurs when a "master-servant" or "employer-employee" relationship exists.

II. BACKGROUND

A. THE GROWTH OF CONTRACTOR SUPPORT SERVICES

The Assistant Secretary of the Navy, Manpower, Reserve Affairs and Logistics (M,RA&L), formerly known as the Assistant Secretary of the Navy, Installation and Logistics (ASN (I&L)), expressed interest in the nature, extent, and policy applicable to the procurement of contractor support services in support of the Navy's major acquisition programs [22:2]. The Chief of Naval Material undertook a review of support service contracts in a sample of projects in the Naval Air Systems Command (NAVAIR), the Naval Sea Systems Command (NAVSEA), and the Naval Electronic Systems Command (NAVELEX). The initial study reached the following conclusions [19:i]:

a) the trend of "support services" has been increasing dramatically since FY 1963

b) the trend of real procurement (constant dollars) has been downward while the trend of "support services" has been upward

c) the dollar volume in FY 1973 was $342 million while it rose to $812 million in FY 1975. "Support services" were estimated to be over 19,000 man-years of effort in FY 1975.

Subsequent studies, field investigations and analyses have revealed even higher trends in this area. Deputy Chief

of Naval Material (Procurement and Production), now known as the Assistant Deputy of Naval Material (ADCNM) for Contracts and Business Management, Rear Admiral S. J. Evans, SC, USN, stated, "A more accurate assessment of the extent of total Navy involvement in contractor support services would be $1.2 billion in FY 75 vice the earlier finding of $812 million [22:2]." Additionally, RADM Evans pointed out that more than 50% of the project dollars directed to supporting activities is contracted out and that project managers obtain contractor support services at a rate of approximately three contractor employees for each of their own direct staff members [22:2]. A later observation by Captain G. R. Henry, SC, USN, (ADCNMfor Contracts & Business Management), extracted from the Contractor Support Services Review (FY 77 update), indicated still further increases in contractor support services [36:1]:

a) white collar support services procured by the hardware Systems Commands (SYSCOMs) have increased 23% during the period FY 74 through FY 77.

b) white collar support services procured by the Field Purchase System have increased 149% during the period FY 74 thru FY 77.

The bottom line on contractor support services is that Naval Material Command (NAVMAT) records support a ten-fold growth in dollar value during the 1966-1976 timeframe [22:3]. While some of this increase may be attributable to inflation and more accurate data collection means, there has been

significant growth in the use of all forms of contractor support services. Future Navy use of contractor support services may continue at the current high rate or may even increase. Admiral Alfred J. Whittle, Chief of Naval Material, forecasted that "...we are going to have to contract out more work simply because of the personnel ceilings that are placed upon us each year [13:A-11]."

B. THE TYPES OF CONTRACTOR SUPPORT SERVICES USED

In addition to surfacing the Navy's increasing dependence on contractor support services, the aforementioned studies categorized the types of services involved. The lack of appropriate in-house expertise has resulted in the procurement of a broad spectrum of contract support services ranging from scientific studies and technical support to basic management support services. At both the project manager and field activity level, areas where a general lack of functional expertise exists include [55:14]:

a) Reliability and Maintainability
b) Integrated Logistics Support
c) Test and Evaluation
d) Cost and Financial Analysis

The range of functions performed through support contract tasking has covered and continues to cover almost the entire gamut of what is listed as the government's in-house responsibility. Representative support services contracted out include [55:15]:

1. Integration of new acquisition concepts, such as design to cost and life cycle costing, into new and existing programs.

2. Preparation of internal project documentation (Selected Acquisition Reports (SARs), Advanced Procurement Plans (APPs))

3. Development of Specifications

4. Preparation of Briefing or presentation material.

5. Coordinating/expediting government furnished material and equipment.

6. Coordination of meetings

While most of the individual effort called for is relatively short term project or program support, concern was voiced by RADM Evans in the personal services arena and the potential for organizational conflicts of interest where support service contractors are involved in multiple projects [22:4].

The "Report on the Navy's Involvement with Contractor Support Services" concluded that the procurement of contractor support services occurs at all levels of the Navy Command structure. Placing greater reliance on field activities, such as Navy laboratories, would not reduce the extent of contracting out--it would merely shift responsibility for the procurement of services [55:17]. It is therefore incumbent on the program or project manager, commanding officer of field activities, and contracting officers at all levels to place increased management attention on

controlling what the Navy buys (by assuring the validity of the requirement) and how the Navy buys (by assuring proper contract placement and administration).

C. THE NEED FOR INCREASED COMPETITION FOR CONTRACTOR SUPPORT SERVICES

The extent and growing reliance on contractor support services has been well-documented in addition to the critical need for Government control over many of these services. But what effect does this have on competition for contractor support services? Should the Government compete for these services?

The initial study into the extent of Navy involvement of "support services" reported that the top 137 contractors ($500K or more in contractor support services in any one year between 1973 and 1975) had been increasing their share of these services from 90% in FY73 to 94.5% in FY75. "This indicates 'inside track' situations and sole source versus competitive procurements"[19:i]. In the Washington D.C. area, 6 contractors accounted for 50% of total contractor support dollars in FY 75 [55:9]. These Navy findings appeared during the same time period when the Washington Star reported that Representative Les Aspin (D-Wis) said, "there has been a steady decline in the competitive awarding of defense contracts in the last five years", decreasing from 35.8% in 1971 to 30% in 1975 and that sole source contracts increased from 39.7% to 45.8% during this five year period [80].

The NAVMAT studies and reports on the involvement of the Navy in contract support services revealed that the incidence of competition was low and that the effectiveness of competitive efforts was weak. RADM Evans summarized this problem area of contractor support services [22:4]:

> In procuring services of this nature the product sought is dependent upon the capabilities and experience of company employees and to some degree corporate memory. It is therefore difficult to make meaningful proposal evaluations, particularly of companies capabilities, when many firms can hire requisite expertise after contract award from among the growing consultant population of former military/civil service employees... Once an initial contract is awarded, the relationship established tends to perpetuate itself on a sole source basis.

In summary, preliminary research indicates that the use of contractor support services is increasing and, at the same time, the incidence of competition for these services is declining. In light of the lack of in-house government expertise coupled with staffing constraints, the project manager and contracting officer have few alternatives but to increase the use of contractor support services. The project manager and the contracting officer must ensure that proper justification exists for the use of these services. Control over the use of these services and the contracting process itself must be exercised. Through the joint efforts of the project manager and particularly the contracting officer, the downward trend in competing for contractor support services can be reversed.

It is the intent of this thesis to propose actions that might aid the contracting officer in reversing this downward

trend. With proper application of the elements discussed herein, it is suggested that the professional contracting officer can indeed increase competition of contractor support services.

D. DEFINITION OF COMPETITION

1. Price vs. Technical Competition

Before proceeding with a discussion and analysis of the research question of this thesis, i.e., "Is it feasible to improve the extent of competition of white collar professional contractor support services contracts?", it is necessary to understand and define the concept of competition. The Defense Acquisition Regulation (DAR) 3-807.1 provides the following guidance on price competition:

> Price competition exists if offers are solicited and (i) at least two responsible offerors (ii) who can satisfy the purchaser's (e.g., the Government's) requirements (iii) independently contend for a contract to be awarded to the responsive and responsible offeror submitting priced offers responsive to the expressed requirements of the solicitation.

To this understanding of price competition, the contracting officer must consider the concept of technical competition, applicable when award is to be based upon technical and other factors in addition to price or cost. White collar contractor support services are typically characterized by technical competition. Examples are: Research and Development (R&D) studies, concept definition activities, alternative design efforts, engineering support services, management support analyses or recommendations. When buying value, pushing the state-of-the-art or purchasing

a contractor's best level-of-effort, the Government may be unable to state its minimum need and therefore competition, according to the Federal Acquisition Act, 5.5, "insures the government of alternative offers that provide a range of concept design, performance, price, total cost, service, and delivery." In addition to understanding the nuances of price versus technical competition, the contracting officer must also be able to distinguish between the economist's concept of "perfect competition" and the concept of effective competition in order to formulate an optimum competitive strategy for a given requirement.

2. Perfect Competition vs. Effective Competition

The economist's definition of perfect competition is characterized by a perfectly competitive market based on four conditions [35:93]:

a) There are numerous buyers and sellers such that no one buyer or seller can materially influence the total market conditions of demand, supply or price.

b) The commodities and services being sold and bought are homogeneous.

c) There are no restrictions on the entry or exit of firms from the market.

d) All buyers and sellers have perfect knowledge of the product or services being sold and the prices of those transactions.

In the defense market today, the government has created a monopsonsitic market characterized by a single

buyer and several sellers thereby influencing total market conditions of demand, supply and price. Restrictions exist to market entry, products and services offered are not identical, and all sellers (as well as the Government) do not have perfect knowledge. Thus, conditions of perfect competition are not encountered. However, the contracting officer may create conditions conducive to effective competition. Effective competition is said to exist when the expected value of the benefits to be derived from competition exceed the expected costs of creating competition, as measured in monetary and/or non-monetary terms.

The proposed Federal Acquisition Act (S.5) characterizes effective competition by:

a) timely availability to prospective sellers of information required to respond to agency needs;

b) independence of action by buyer and seller;

c) efforts of two or more sellers, acting independently of each other, to respond to an agency need by creating, developing, demonstrating or offering products or services which best meet the need as a desired function to be performed, performance or physical requirements to be met, or some combination of these;

d) absence of bias or favoritism in the solicitation, evaluation, and award of contracts.

It is the contracting officer's responsibility to rely on and promote effective competition. Along with the definition of effective competition, the contracting officer should be aware of some of the factors that make competition less desirable than single source or sole source contracting to the contractor and industry.

J. Roland Fox raises some issues that make non-competitive procurements preferable to competitive procurements [25:256]. The first issue, echoed by both contractor management and DOD contract customers, is that competition requires more time and effort than noncompetitive contracting. Care must be exercised in developing a thorough statement of work, a Request for Proposal (RFP), and evaluation criteria to ensure that each offeror's proposal is evaluated on the same basis. The planning, implementation and accomplishment of this process may add months to the procurement administrative lead time. Although competition may require significant effort, it is also true that considerable time and effort may be required to properly document the sole source justification for a noncompetitive procurement. Under Cost Principles, in accordance with DAR Section XV, noncompetitive contract actions over $100,000 require an in-depth audit by the Defense Contract Audit Agency (DCAA). This is time consuming, as are the requirements for a Determination and Finding (D&F) and preparation by the customer and contract negotiator for an appearance before the Contract Review Board (CRB).

A proper CRB requires clear and convincing evidence that a sole source procurement is in the best interests of the Government. The reluctance of a CRB to "rubber stamp" approval of sole source procurements forces the customer to think "competitive procurement" in the early planning stages of his requirement. Nonetheless, cooperative participation

by all parties involved can reduce the time and red tape involved and the end result of the competitive process can justify the increase, if any, in time and red tape.

Second, Fox advances that competition increases the likelihood of protests and disputes from one or more contracts, noting (a) that losing contractors often content that the Government gave special information to the winning contractor, and (b) that contracting officers must take particular care to document and justify each decision made in a competitive procurement [25:257].

The researcher posits that this argument against competition seems weak because just as many protests or disputes may arise from awarding a contract on a "sole source" basis based upon insufficient justification. In a properly handled competitive award, all offerors receive the same information. Indeed, the Code of Ethics and Professional Responsibility for Professional Contracts Managers states that each Certified Professional Contract Manager must maintain his or her integrity and objectivity at all times so as to exercise competent and independent professional judgement. And in regard to Fox's latter point, this same Code of Ethics demands that each contracting officer recognize that contracts are matters of public interest and public record and, therefore, shall conduct his or her management activities so that they can be fully substantiated and properly supported [5:10].

Thirdly, Fox's suggestion that competitive procurement is less desirable than single source procurement appears to be even to the researcher. He states that competition frequently disrupts long-established relationships between Government and industry personnel who have worked together on the procurement of a particular item [25:257]. Not only does this run counter to the forementioned Code of Ethics, but also the principle of an "arm's length" relationship between the government and contractor required for the integrity, fairness, objectivity, and absence of bias or favoritism in the procurement process.

Zemansky is a strong advocate of competition for architectural, engineering and consulting firms that render professional services. In discussing the pro's and cons of competitive procurement, Zemansky developed several positions of which the contracting officer should be aware. Some of these positions are synopsized below and expanded upon by the researcher.

CON: Competition often results in awards to other than the "best qualified" firm.

PRO: The term "best qualified" requires definition [82:7].

The researcher has observed that the determination of who is the best qualified should be made by a sole selection board or the contracting officer based on clearly delineated evaluation criterion in tandum with a well-written statement of work and RFP.

CON: The preparation of competitive proposals would significantly increase costs for both buyer and seller thereby negating any benefits that may be obtained through the competitive process.

PRO: The results of competition are found to decrease cost between 15-25% for the buyer. Proposal costs are generally included in the normal costs of doing business and suppliers of professional services should not be immune from the rigorous discipline of the marketplace[82:8].

CON: Selection influenced on price often leads to the possible employment of inexperienced personnel or "subprofessionals," instead of first-line personnel for some work.

PRO: These statements tend to reflect a lack of integrity of the "professionals" guilty of what might be unethical practices [82:8].

The researcher would add that the Government should consider the technical/cost trade off in determining the evaluation factors. Requests for proposals requiring a high degree of professional expertise should be awarded on a different basis than those requiring less expertise. The former should be awarded on a high technical/cost trade off (say 90/10) with a personnel substitution clause. The latter should be awarded on a lower technical/cost trade off (say 50/50) or award could be based on that qualified offeror who submits the lowest price.

CON: At the outset...a detailed prospectus (specification or SOW) cannot be prepared to define the exact nature and scope of the services to be performed since professional services involve many intangibles such as technical knowledge, judgement, skill and decision making.

PRO: These statements can, to some extent, be obviated by a myriad of tools available to the contracting officer [82:8].

Included are, performance specifications, a conclusive statement of work, a well-written request for proposal (RFP), meaningful evaluation criteria, effective contract planning, and selection of the proper contract type.

CON: No matter what the system, means of circumventing the process will always be found by the unscrupulous.

PRO: Despite weakness in the system, competitive bidding (and negotiation) still provides the best safeguard against profligacy and corruption. The lack of bidding rules officially opens up the opportunity to collusion between contractors, overpayment for shoddy products or "kick backs" [81 :5].

Zemansky concludes that, without delving into a detailed analysis of numerous reasons for opposition to competition found in his research, there is not one reason for non-competitive procurement that cannot be accommodated in a sound, competitive, and if necessary, time compressed contractual process [83:84].

Competition is the basic fundamental cornerstone of the procurement process. Hitch and McKean identified the importance of competitive contracting in 1960 [38:232]:

....Nothing spurs a contractor as effectly as knowledge that his performance will be compared directly with that of a rival or rivals, with appropriate rewards and penalties--either in the short run (by the terms of the current contract) or the somewhat longer run (in the next or later contracts).

Competition goes a long way to ensure that the final price is fair and reasonable to both the buyer and seller. However, in contracting for contractor support services, the importance of innovation, creativity, related experience and the individual qualifications of contractor personnel should not be overlooked. For many requirements it is impossible to specifically identify the end products. This lack of product identity requires a different form of competition from that applicable to specific end items or familiar products.

III. WHAT PROBLEMS ARE ASSOCIATED WITH COMPETING FOR CONTRACTOR SUPPORT SERVICES?

A. STATEMENT OF WORK

The Statement of Work (SOW), scope of work, technical requirement or specification (design or performance) are terms used to state Government requirements. The SOW is the foundation of the RFP itself and the understanding of the SOW should be an integral part of the evaluation criteria. In source selection, each plays a major role.

The SOW describes in detail the end item, task to be performed, or level-of-effort to be exerted in the performance of the task or job. It consists of:

a) expressing the contract-desired output in clear, simple, concise and legally enforceable terms.

b) using a format that presents the specified tasks or requirements in an easily understood manner.

c) determining what exhibits will help convey to the contractor the job that needs to be done [1:23].

Also included in the SOW is the technical and management data applicable to the contract. Industry has alleged that some work statements have become so complex that the contractor cannot fully comprehend all the requirements the Government desires. However, if the SOW is not sufficiently comprehensive, some contractors may not submit offers because of uncertainty regarding the tasks involved, or conversely, feel inhibited by the requirement because the SOW is too

restrictive [68:2]. Additionally, especially with respect to contracting for white collar support services, when the Government is attempting to buy the height level of quality, vague specifications and poorly defined evaluation criteria have increased (a) disputes, protests, and claims due to misinterpretation of requirements, and (b) unsatisfactory contractor performance [34:6]. A poorly written SOW may result in needless delays and extra administrative effort during the source selection process. Delays may also be experienced in communication required to clairfy an ambiguous SOW. An otherwise qualified contractor could be disqualified from the selection process due to inadequate technical responses to an incomplete SOW. Costly contingency allowances or low quality and inventive proposals may also be the unintentional results [68:2].

An incomplete SOW may also lead to unintentional "buying in" as the contractor may not fully comprehend the extent of the Government's requirement. The contracting officer usually finds this out during the performance of the contract or when the final task or level-of-effort is delivered below the Government's expectation and requirement. The Contracting Officer is forced with either accepting a lower level-of-effort or issuing a modification clarifying the SOW.

Rarely has a termination for convenience or termination for default been upheld in professional service contracting. The doctrine of "contra proferentem" means that interpretations concerning ambiguous specifications and statements

of work will be held against the writer of the specifications (generally the Government). The drafter of the Statement of Work must ensure that it reads well, is logical and can effectively communicate the needs of the Government to the contractor. The requirements for technical or engineering studies often specify a level-of-effort to be attained and many words used to describe the Statement of Work do not have exact meanings. The use of abstract words or concepts should be defined in conjunction with examples, illustrations, or definitions that further amplify what is required. "Shall", "will", "any", "either", "and for", and the misuse of pronouns should be avoided. Various shades of meaning may be conveyed by the choice of words. In order to answer the questions what are the work requirements? or what are the words that express the need explicitly?, the Military Handbook on the Preparation of Statement of Work (SOW) defines the following work words to aid in identifying the objective need (the what, why, and application) [46:41].

Analyze	(solve by analysis)
Calculate	(find out by computation)
Compare	(find out likeness or difference)
Determine	(resolve; settle; decide)
Examine	(look at closely; test quality of)
Extract	(take out; deduce, select)
Evaluate	(find or fix the value of)
Interpret	(explain the meaning of)
Organize	(integrate, arrange in a coherent unit)
Resolve	(reduce by analysis, clean up)
Recommend	(advise, attract favor of)
Review	(inspection, examination or evaluation)

Realizing the importance of the effort in developing a Statement of Work (i.e., the technical or functional area,

the contracting office, and manpower and/or management engineering), the Department of Defence (DOD) has a comprehensive guide to the preparation of conclusive SOW's for application to any of the R&D phases as well as the production phase of material acquisitions. It also covers the SOW preparation for nonpersonal service contracts [46:40].

How long should a Statement of Work be? How detailed? How can the contracting officer determine the optimum effectiveness of the SOW when it is often written in technical language addressing the requirements of technical personnel? How can the contracting officer tell if the SOW was written around the known capabilities of a certain contractor thus, under the guise of competition, ensuring sole source to the contractor the requirements personnel desired? (At a major Navy Laboratory, one SOW submitted to the contracting officer was taken verbatem from an engineering services company marketing brochure![103]) The answer lies with the professionalism and expertise of the contracting officer and the negotiator assigned to the requirement. While some SOW's are so brief that they do not even approach the "precision of ambiguity," [96] others are so complex that they promote "fictitious competition" [93]. Both extremes may lead to problems addressed earlier. A happy medium must be reached, otherwise the foundation of the acquisition and contracting process is breached.

This researcher perceives that the increased contracting out for professional and technical services coupled with personnel ceiling reductions has lead to a new generation of engineers and technical personnel in the government civil service. Lacking the time and resources to work as an engineer or expert in their chosen field, they have been forced to become Statement of Work writers, graders of evaluation criteria, and contract administrators. The previous attitude of "I don't want to be bothered with writing a SOW" or "Everybody knows we engineers can't write" is being changed by necessity. The contracting community is enhanced by this evolution. However, many Navy laboratories and agencies are losing core capabilities and control over the conduct of their programs and mission as well as losing skilled Government personnel to the private sector.

In summary, a clear, concise, and conclusive SOW is essential to effective contracting. It describes in detail the end item, level of effort or task to be performed, and includes the technical and management information necessary for effective competition and successful contract performance. The preparation of a conclusive SOW is a team effort between user, customer, and contracting officer that should commence as early as possible in the contracting process.

B. EVALUATION FACTORS

As important as the Statement of Work, the terms of the competition are crucial in the source selection process and

should be unambiguously defined. If award is to be made on factors other than price, the solicitation must include evaluation factors. DAR 3-501(b) state that:

> When an award is to be based upon technical and other factors in addition to price or cost, the solicitation shall clearly inform offerors of (A) the significant evaluation factors, and (B) the relative order of importance the government attaches to price and all such other factors.

General considerations of the evaluation process usually consist of technical, management and cost areas. The contracting officer should additionally take into account past performance, level of experience and expertise, and personnel resources to perform the tasks set forth in the RFP. For example, an Air Force RFP for Engineering Support Services included four technical criteria used in evaluating the technical proposal to determine the offeror's ability to meet the requirements as stated in the Statement of Work (SOW).

Criteria 1, 2, and 3 were of equal importance while criterion 4 was of lesser importance:

Criteria 1: Understanding the objectives, requirements and overall conditions.

Criteria 2: Soundness of technical approach.

Criteria 3: Technical experience, capability and performance history.

Criteria 4: Compliance with the instructions and requirements of this solicitation [39].

To illustrate the complexity of the process, the technical area was further divided into eight sub-factors with importance of the sub-factors listed in descending order: configuration/ interface management, Statement of Work review, software quality support, reliability support, materials and process control support, system safety monitoring, personnel sub-system support, and manufacturing and production coordination. Each of these sub-factors in turn had at least four factors. Similar criteria and format followed for management and cost areas. Research on DOD and NASA evaluation criteria found similar complexities, including design and program planning approachs, approachs to requirements analysis and approachs to trade-offs/methodology. However, NASA evaluated proposals with respect to four groups of factors: mission suitability factors, cost factors, experience and past performance and other factors (financial conditions, small business, etc. [50:2-1]) Evaluation criteria may also be based upon the resumes of personnel offered by the contractor. Resumes should show the education and experience of the available personnel and the labor category outlined in the SOW to which the individual will be assigned. The reason for this is twofold: the competing offeror with the most qualified personnel should have a competitive advantage and the government's definition of a project engineer, senior or junior engineer might differ from the offeror's definition.

Hence the evaluation criteria can be a substantive part of the RFP. The more technical or complex the requirement,

the more complex and lengthy the evaluation criteria may become. Evaluation criteria are never identical. Each procurement action has a separate and distinct set of evaluation criteria. In a recent Contract Management article, Walter McClelland stated that we must guard against over-complicating the evaluation process [45:16]. To achieve this we must have a complete and comprehensive SOW and evaluation factors and criteria. But in this latter regard, the DAR 3-501(b) inhibits the effectiveness of the contracting process: "Numerical weights, which may be employed in the evaluation of proposals, shall not be disclosed in solicitation."

Both the government and the contractor benefit by a well-written RFP, however, without knowledge of the numerical weights, several problem areas can arise. For example:

1. The contractor must guess what the Government wants. This encourages informal communication lines between the Government's technical people and the contractor which might result in one company acquiring a competitive edge.

2. Informal communication breeds familiarity that could lead to an illegal personnel services situation.

3. By knowing what the government intended, it gives an incumbent contractor a competitive advantage as does the company who has had prior dealings with the particular procuring office.

4. Even a winner by competition could be overcharging the government due to overloading the labor categories, i.e., not knowing the numerical weights and to make their technical

proposal score higher, the contractor offered a senior engineer vice a junior engineer, when the work could be performed by a junior engineer.

5. With a lack of numerical weights, contracting officers must rely more on narrative language and definitions that vary from agency to agency or activity to activity. Here again an incumbent or an offeror with experience with the agency or activity has a competitive edge.

6. All of these factors may lead to protests or disputes.

Femino and Smail conclude that simply by providing numerical weights, contracting officers would insure that the most accurate, intelligent and realistic competition is available. Offerors could focus their attention and resources precisely in those areas most critical to the needs of the Government and would reduce inconsistency, uncertainty, and enhance openess and public confidence in the procurement process [24:21].

Indeed, the more salient information the Government can provide in the RFP, the better off both the contractor and the Government will be. Even if technical/cost trade-off information could be divulged, competition and contract performance would be enhanced. Franc Wertheimer, president of a successful engineering services contractor, stated [115]:

> The more I know up front, the better job I can do of responding to the government's needs. The technical/cost tradeoff is a gauge. I'll offer a top engineer on a 90/10 trade off and a less experienced engineer on a 75/25 trade off. By the same token, on pushing the state-of-the-art on R&D contracts, I'll offer my best talent while on Integrated Logistics Support Contracts I'll offer mediocre talent.

But some lawyers are reluctant to divulge even this simplest of information in an RFP to offers due to nebulous guidance. They won't let us say an 80/20 technical trade-off but they will let us say 5 to 1," stated one Government contracting officer [103].

The Commission on Government Procurement recommended a change in the law concerning competitive procurements to require the disclosure of evaluation criteria and their relative weights [72:22]. This recommendation is currently in Section 302 of the draft of the Federal Acquisition Reform Act (S.5):

> Each solicitation shall include both the evaluation methodology and the relative importance of all significant factors to be used during competitive evaluation and for final selection.

Indeed, as echoed by Femino and Smail, the Commission on Government Procurement concluded that the disclosure of relative weights and evaluation factors would create greater public confidence in the procurement process, motivate procuring agencies to give greater attention to definitive Statements of Work and what they require of contractors, and facilitate the preparation of more responsive proposals [71:25].

In summary, the Statement of Work and its parent Request for Proposal (RFP) must be understandable--it must be able to get across to offerors what the Government needs. To assist in this process, the RFP must present an integrated package to the offerors. The SOW is only one vital cog of the RFP. The instructions for preparation of the proposal,

the technical content of the proposal, and discussion of evaluation factors and criteria are equally essential cogs [43:30].

C. COMPETITIVE ADVANTAGES OF INCUMBENTS

Although the disclosure of relative weights and evaluation factors to offerors would aid in the source selection process and increase competition for reasons addressed previously, the problem of how much weight to assign past performance continues to plague contracting officers. DAR 1-903.1 states that:

> "...the contracting officer should consider...technical competence...and past performance in adhering to contract requirement, weighing each factor in accordance with the requirement of the particular procurement."

Currently, no systematic program exists for recording, storing or analyzing contract performance of service contracts [37:58]. The only means of obtaining such information is from the RFP; which, because of its source, is biased at best. The contracting officer must contact the activities or agencies that were recipients of the offeror's services for accurate information.

In response to the need for a structured program to measure and weight contractor past performance, M. A. Nassr proposes a simplified, fact-oriented data system broken down into four areas: (1) administrative, (2) cost, (3) schedule, and (4) performance [49:10-12]. While the intent of this DOD-wide proposal is commendable, its benefit to the

researcher is questionable. The effort required by contracting personnel to compile, record, and distribute such information would be an added administrative burden.

With undue emphasis on past performance, a new contractor is at a competitive disadvantage--first, because he is unknown and secondly, because of a comprehensive data bank on experience contractors with whom the new company competes. This contradicts the policy contained in the proposed Federal Acquisition Regulation (FAR) "to facilitate the competitive entry of new and small sellers." Emphasis on past performance may also restrict the growth of competition in existing markets. Knowing that they would not be rated on past performance or on a product or service they had not provided previously, a growing contractor has no incentive to diversify and expand into new markets. Frequently, the current contractor whose performance has been satisfactory enjoys a favorable relationship with the customer who prefers a continuing relationship with him. This favorable relationship and familiarity could result in the contractor receiving unduly high grades in Nassr's past performance criteria. Satisfactory contractors receiving outstanding marks could progress even higher. Thus, there would be little discrimination between a top performer and a satisfactory performer--the result being that only those contractors failing completely to perform would receive low marks. (Parenthetically, this type of information on this latter point is found in the current Joint Consolidated List of Debarred Ineligible and Suspended Contractors.)

The effectiveness of Nassr's past performance grading criteria would further be eroded by a recent GAO decision. Here, the contracting officer rated performance of the offerors in the most recent years as either "satisfactory", "adequate", or "unsatisfactory." The unsuccessful offeror alleged that the contracting office precluded the offeror's most recent experience for the 7-month period between the date of the last evaluation and the proposal submission date [21:A-7 and 31]. Thus, any consolidated DOD--wide past performance grading system would be obsolete unless the proposal submission date happened to coincide with the most current performance evaluation grades.

The performing contractor enjoys a competitive advantage even without increased emphasis on past performance. GAO has repeatedly held that the contracting officer has no duty to neutralize the incumbent contractor's competitive advantage [30]. The only basis for favoring an unsuccessful offeror's protest, would be where "the competitive advantage enjoyed by a particular firm would be the result of a preference or unfair action by the Government" [29]. As will be seen later in this thesis, the Service Contract Act and Office of Federal Procurement Policy (OFPP) policy on preventing "wage busting" for professionals further protects the contractor from competitors. The satisfactory incumbent is assured of the successor contract by offering the services as requested in the next RFP at the current rate. By law

and policy, no offeror can successfully underbid the current contractor. Furthermore, who would have more "hands on" experience and understanding of the successor RFP?

Personal or employee experience and qualifications is often one of the highest-ranked evaluation criterion in service contracts usually outweighing corporate experience. The offeror with personnel presently employed by the offeror on a full-time basis, i.e., the incumbent, will normally receive a higher mark in the evaluation process than an offeror who proposes an individual not currently under the offeror's employ on a full time basis. In fact, some RFP's have gone as far as stating that submission of resumes of individuals not currently employed by, not under subcontract to the offeror, or with whom the offeror does not have a bona fide employment contract, may be cause for the rejection of the offer [57]. This is done to prevent a "body shop" from receiving award and to protect the Government against the vicissitudes and uncertainty inherent in "body shops". (A body shop is the unofficial term given to those services contractors who, at time of solicitation and proposal preparation, do not have employment agreements with proposed service employees [103].) This maybe viewed by many small business specialists as restricting competition to only those large businesses with large staffs and high overhead costs sufficient to retain technical expertise between contracts. Conversely, some solicitations may ask for resumes requiring only that those persons be employed by the

time of award. This often results in a situation where the employee offered by a contractor is performing as an employee of the incumbent contractor. Hence, the company name changes but the person actually performing the work remains unchanged.

The contractor's position affords him other advantages in competing for follow-on contracts. He may acquire propriety data on the instant contract that may put him in a sole source position on the follow-on requirement. Even if the Government included a data rights or patent data rights clause in the instant contract, the contractor might withhold certain data that would give him an advantage in a competitive follow-on procurement. The incumbent contractor is also in a favorable position to receive informal information and communication from the technical personnel concerning funding constraints, government estimates, knowledge of solicitations before they are synopsized enabling them to have a longer time period for proposal preparation, and other useful management information. Informal communication on government technical needs may result in the incumbent submitting a "unsolicited proposal" that is in reality not an original innovative idea from the contractor but a formalization of governments own needs. These informally solicited proposals are often submitted by former government engineers who have terminated or retired from the Civil Service and now have their own companies or work as employees of firms they previously dealt with as government personnel [84].

The contracting officer must evaluate past performance in competing for professional support services in light of each requirement. However, undue emphasis should not be placed on past performance. The major concern in selecting a contractor, determines Shnitzer, should be the quality of his offer, not of his background. The successful offeror should be responsible, "but the focus in making the selection should be on the merits of the offer, not those of the offeror" [75:21]. In the evaluation of past performance, the contracting officer should be cognizant that the incumbent contractor does in fact enjoy a competitive advantage and should recognize the need of an "arms length" relationship between the government's contracting and technical personnel and the incumbent contractor.

D. LEGAL BACKGROUND AND CASES

A review of the landmark decisions and opinions should prove to be beneficial to the contracting officer in an understanding of the personal vs. non personal services dilemma, an integral part of contractor support services.

The reliance on subjectivity and the pack of definitive rules in the personal vs. non personal services area has resulted in legal decisions determining the legal aspects of service contracts.

The Fuchu Case in 1964 involved a contract with the Capehart Corporation to furnish technicians to work at the Fuchu Air Force Base in Japan. The Civil Service Commission's

General Counsel, in a ruling with which the GAO concurred, held that an individual is considered to be a Federal employee when the individual is [60:27]:

(1) engaged in performance of a Federal function under authority of an act of Congress or an Executive order.

(2) appointed in the Civil Service by a Federal Officer or employee,

(3) subject to the supervision and direction of a Federal Officer or employer.

If the individuals performing the work meet one of the above criteria, the work should not be contracted out but should be performed in-house by Federal employees.

In June 1967, a landmark opinion was rendered that expanded the principles set forth by the Fuchu Opinion. FPM Letter No. 300-8 described the contracts as follows [26]:

> The Goddard contracts found to violate the personnel laws were "cost-plus-award fee" contracts for scientific, engineering, design, and fabrication services to be provided on-site at Goddard. The contracts called for a specified number of "direct-labor man years" to be provided by the contractor with "average monthly rates of effort" specified. "Key personnel," mainly contractor supervisors, were named in the contract and had to meet the approval of Goddard officials and could not be reassigned or transferred without permission of the agency. The "statement of work" in the contracts was general in nature and the contracts were performed by the agency ordering individual tasks to be done by the contractor. The contractor employees performed on-site, as integral adjuncts of Goddard organizational units. Many had worked in the same jobs for a number of years and for other than the current contractor. The facts established that these employees were (1) engaged in the performance of a Federal function; (2) supervised and directed on the job by Federal employees and officials; (3) occupying Federal positions which Goddard had created in connection with the contract operation; and (4) "appointed" either by Goddard officials or by the contractor, in effect exercising the power of appointment, which could not lawfully be delegated to a private company.

In October of 1967, the General Counsel of the Civil Service Commission, Mr. Lee Perllerzi, rendered a forty-page opinion, known as the Perllerzi opinion, that found these contracts to create an employer-employee relationship between the Government and the contractors employees. He concluded that these contracts and "all others like them are prescribed unless an agency passes a specific exception from the personnel laws to procure personnel services by contract [26]."

These conclusions were included in FPM 300-12 expanding the criteria for determining when a contract for support services is illegal. These six elements should not be looked at separately but should be viewed on the basis of the overall substance of the contract operations [27]:

1. Performance on-site.
2. Principal tools and equipment furnished by the Government.
3. Services are applied directly to integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.
4. Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
5. The need for the type of service provided can reasonably be expected to last beyond one year.
6. The inherent nature of the service, or the manner in which it is provided reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order:
   - To adequately protect the Government's interest, or
   - To retain control of the function involved, or
   - To retain full personal responsibility for the function support in a duly authorized Federal officer or employee.

Shortly after the Pellerzi Opinion in 1967, AFGE protested the removal of Civil Service personnel at the Marshall Space Flight Center when service contractor personnel were performing those functions performed by the RIFed (Reduction in Force) Government personnel. The U.S. District Court for the District of Columbia held that 22 of 32 contracts violated the Pellerzi standards as applied by the court and were therefore null and void, the court directed NASA to terminate the contracts and retroactively reinstate the Civil Service personnel who had been displaced [3:40]. Although many factors were involved, government supervision was the most critical test [62:1]

There are several interesting aspects to the Lodge 1858 case. First, the nine years between the court case being filed by the AFGE and the summary judgement shows the confusion and lack of direction inherent in whether services rendered by contractors are personal or nonpersonal in nature. However, the government's defense of Lodge 1858 forced it to examine its contracting-out policy and demonstrated the need to define contracting-out policies. What emerged is today largely the Government's policy on contracting-out [74:1].

The second interesting aspect of this case is that the contracts that were found to be nonpersonal and proper were photo repair, custodial, laundry, and refuse collection. These were all blue collar efforts that could be readily identified, segregated and operated as separate functions

independent of Government supervision. Conversely, the white collar efforts, such as engineering support for design, test evaluation, analysis, document preparation, and related tasks were found to be personal in nature and therefore illegal. While the segregated blue collar efforts could be adequately specified in the statement of work(s) the white collar effort was generally program support and not identified or segregated as a separate function. The District Court found that this type of support effort cannot operate independently of Government supervision [6:1].

The Court considered the following as factors in establishing an improper employer-employee relationship [6:1]:

(i) detailed reporting requirements
(ii) prior approval of a staffing plan, personnel policies and changes of key personnel by the contracting officer
(iii) prior approval of labor rate; and salaries by the contracting officer
(iv) contractor reimbursement only upon approval of contracting officer
(v) Government determination of what constitutes acceptable work
(vi) control of work by the issuance of schedule orders, supplemented by technical direction, and monitored by technical representatives
(vii) even where only the RFP required submission of data relating to the number and kinds of positions, detailed personnel qualifications and experience data, and qualifying policies and procedures, it was found that such action allowed the Government to improperly direct, influence, or control the number, kinds, qualifications, sources, and organization of the contractor's employees.

To the researcher, the factors considered by the court in establishing an improper employee-employer relationship coupled with the finding that white collar program support type efforts could not by their very nature operate

independently of Government supervision, would have seriously hampered the Government's efforts in contracting out to support its missions.

On March 20, 1978, the United States Court of Appeals for the District of Columbia Circuit reversed the District Court's ruling, finding that the District Court applied an "overly broad standard" in determining whether an employer-employee relationship existed [41:496]. While the Government gave orders for specific services and retained the right to reject the finished product or result, the Government did not exercise the degree of supervision necessary to convert the contractor's employees into Government employees.

Thus, in dealing with the legal aspects of contractor support services, and consultants [15:A-11], the contracting officer is faced with a volatile, dynamic and everchanging challenge. He/she must have an understanding of past contract law and work closely with legal counsel to keep current on the most recent decisions, findings and opinions concerning contracting support services and the personal vs. non personal services dilemma.

E. PERSONAL VS NONPERSONAL SERVICES DILEMMA

Many situations will arise where the Government does not want to hire people to provide goods or services, yet the work or service required is essentially labor. The Government may obtain nonpersonal services by contract providing

that [76]: (1) the contract itself asks for an end item and is the primary purpose of the contract, and (2) the contract must be written and administered in such a way that control and supervision over the work and discretion to the techniques which will be used remain solely with the contractor. Subjectivity and the use of judgement complicate the personal vs nonpersonal services dilemma.

There are no definitive rules for determining whether services are personal or nonpersonal. There are many factors involved and determination can only be the result of balancing all the factors in accordance with their relative importance pertaining to a particular case of situation. DAR 22-1-2.2 contains factors for consideration which include the nature of the work, contractual provisions concerning the contractor's employees, other provisions of the contract such as whether the services can properly be defined as an end product or specific task, and the administration of the contract. While there is normally not one factor that distinguishes a legitimate nonpersonal service contract from a personal and illegal service contract, a service contract is personal and illegal when the relationship between the Government and the contractor's personnel is that of employer and employee, i.e., when the "master-servant" relationship exists. Most controversies in the personal vs nonpersonal services area result not from the way the contract is written but from the way it is administered [20:10]. While the problems of contract administration of contractor

support services are beyond the scope of this study, the contracting officer should be aware of the requirement for professional contract administration in the planning and pre-award phases, including the training of users of contractor services, technical, engineering and management personnel.

F. THE SERVICE CONTRACT ACT

The Service Contract Act of 1965 was written to bridge the gap left by the Davis-Bacon Act (construction contracts) and the Walsh-Healey Public Contract Act (supply contract) [11:A-7]. The act covers "every contract entered into by the United States or the District of Columbia in excess of $2,500...the principal purpose of which is to furnish services in the United States through the use of service employees [78]." The act defined service employees as: guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled semi-skilled, or skilled manual labor occupations. It also stated that the contractor must pay his employees the prevailing wage rate for the locality determined by the Secretary of Labor, including fringe benefits, and incorporating the wage as a minimum to be paid by the contractor when it is awarded a Government service contract [78].

Paul R. Shlemon effected that [77]:

> "Although the Service Contract Act was intended to benefit 'blue color workers,' the Department of Labor has, without justification, implemented it as though it was intended to cover all employees who were not covered either by the

Davis-Bacon Act or the Walsh-Healey Act. It has issued prevailing wage determinations covering...personnel clearly not intended to be covered by the act."

As stated in the Federal Contracts Report, the purpose of the act was to provide wage protection for service employees who were "victims of fierce cost competition" in service contracts [14:D-1]." However, the real problem of the act, in addition to curbing competition, was that it was vague, ill defined, and resulted in the Department of Labor interpreting regulations to implement the act, thereby drawing complaints from the organized labor, OFPP, contracting agencies and contractors [14:D-1].

The above ambiguity and complaints led to a revision of the Act in 1972. Congress made it mandatory for the Secretary of Labor to issue wage determinations under the act and required service contractors to fulfill a "successorship obligation." Under section 4(c) of the amendment, a successor contractor must compensate his employees no less than the wages and fringe benefits paid by his predecessor under a collective bargaining agreement when the new service contract is for substantially the same work that will be performed at the same location [14:D-2]. Richard Depew states that the 1972 amendment was unique in that it would cause a constant increase in the cost of service contracts--"the legislation stipulates that wages can only be modified upward. This is considered highly inflationary and inconsistent with the Government's desire to control the present inflationary trends in the United States [18:8]."

The act was again amended in 1976, ratifying the Department of Labor's interpretations of the original act and the definition of service employees was expanded to cover clerical and other white collar workers within the definition of service employee except those "employed in bona fide executive, administrative, or professional capacity [66]." This expanded coverage prompted OFPP to issue policy letter (No. 78-2) to prevent "wage busting" for professional employees of Federal contractors. Effective April 1, 1978, all solicitations included the language contained in the policy letter whenever professional employees are expected to perform the services, "Unwarranted reductions in salaries and fringe benefits can occur during competition for government service contracts [61]."

By a vote of 22 to 6, the House Labor committee in February of 1978 approved still another amendment to the 1965 Service Contract to include protection for professional employees against so-called "wage busting [11:A-7]."

This seems to be a direct contradiction to the Government policy of fostering competition to the maximum practicable extent. It is agreed that "unwarranted reductions in salaries and fringe benefits can occur during competition," but why the overkill by enacting legislation that clearly restricts competition of white collar professionals? The contracting officer should determine what constitutes "unwarranted" reductions that would be considered unfair.

The contention that the Service Contract Act restricts competition also applies to problem successor contracts.

In successor contracts, the incumbent contractor has a clear competitive advantage knowing that his competitors cannot propose a price lower than the price of the current contract. The "successor contractor" provision of the act may also be viewed as a form of auction technique--a price floor is stipulated and proposals below that floor will not be considered, even though a competitor can provide the same services at a lower cost. The Department of Labor's current interpretation, extending the successor contractor provision to all continuing requirements for services even though the performance may be in a different location, further limits competition. The Office of Federal Procurement Policy contends that this policy acts to restrain competition for those service contracts for which the Government does not specify a place of performance, or where performance is in a different location [14:A-1].

This is only a variation to the central contention that the Service Contract Act successor contractor provision, as well as the Department of Labor's wage determinations, restrict competition. Labor rates are the essential elements of service contracts and of many contract support service contracts and are a crucial factor in competition. Under the Act, it would seem that the extent of price competition is reduced to the labor mix or number-of-hours of performance.

In addition to restricting price competition, to the researcher the Service Contract Act may also restrict technical competition. The mandatory Department of Labor wage determinations may prevent the Government's buying of "value." In many technical or engineering contract support services pushing the state-of-the-art, the government needs to buy "value" brain power, or technical expertise. Although "professionals" are exempt from the Service Contract Act coverage, many "white collar" highly skilled engineers and technicians are covered by the Act. Lacking a definition of "professional", determination of Service Contract Act coverage must be made on a time consuming case-by-case basis by the Department of Labor. Thus, a contracting officer may only buy value through an exception of the Act--by the use of consultants--in direct contradiction to the President's policy of reducing the number of contracts to consultants.

Mr. Bill Rae, Naval Supply Systems Command (NAVSUP) Chief Counsel advises that satisfying the Government's minimum needs with full and free competition would be severely limited by revealing the maximum dollar amount available for a particular contract [69]. To the researcher, this argument is also true for a minimum dollar amount which the Service Contract Act imposes. Under the Act, proposals are evaluated in accordance with the specifications and the minimum dollar threshold instead of the specifications themselves. Adequate specifications should be the only constraint on the prospective bidders [69].

The National Council of Technical Service Industries urges repeal of the Service Contract Act. The Council charges that the Act has led to "unnecessary additional Federal expenditures of approximately $400 million annually for support services," runs counter to the President's voluntary wage-price guidelines and is contrary to current administration policy to deregulate industry since it "is an outstanding example of unnecessary regulation and intrusion by the federal government into an important segment of the private economy [12:A-14]. As pointed out by Depew, the act can only be termed as "bad legislation" [18:28] and is not an asset to the contracting process.

G. CONSULTANTS

A consultant is defined by DAR 22-202 as a person who is "exceptionally qualified, by education or experience in a particular field to perform some specialized service." Traditional definitions in the past referred to expert or consultant services as a personal service and required the procurement of such services through the Office of Civilian Personnel Manual [7:7]. However, Office of Management and Budget Bulletin (OMB) No. 78-11 states that consulting services can be obtained by personnel appointment or procurement contract. Consulting services are defined as those services of a purely advisory nature relating to the Governmental functions of agency administration and management and agency program managements when knowledge and experience

on such matters are not generally available within the agency. Examples of consultant services include:

a) advice on organizational structure and management methods.

b) analysis of the impact of a program

c) policy and program analysis evaluation and advice[64].

This bulletin further provides that consulting services will be obtained on an temporary basis only, will not be used to perform work of a managerial nature, and will not be used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures. Thus, the contracting officer's role in the use of consultants is expanded through the use of the contract as a vehicle to obtain consultant services. His responsibilites increase commensurately due to the management controls required.

In a statement to the Senate Governmental Affairs Subcommittee on Reports, Accounting, and Management, James McIntyre, Deputy Director of the Office of Management and Budget (OMB) testified that the following controls (requirements) would be imposed for obtaining consultant services:

a) full justification of the requirement

b) specific, complete work statements specifying a fixed period of performance for the service to be performed

c) maximum competition

d) appropriate disclosure and warning provisions to avoid conflicts of interest

e) proper contract administration during performance [9:A-5].

1. Background and Definition

Why the sudden high-level interest in consultant services and concern with the control of such services? President Carter stated that, "there has been, and continues to be, evidence that some consulting services are being used excessively, unnecessarily, and improperly [67]."

The media was quick to pick up on the President's concern. A Chicago Tribune article noted that, "privately, Carter advisers admit that reforming consultants may be more difficult than reorganizing the government [4]." Bill Peterson reported that more than one-fourth of the people working for the Federal Government in 1976 were outside experts and consultants, not included on normal Federal payrolls [65]. In "The Consultant Mystery--Who Knows How Much?", Lance Gay reports that "management has to look down its own shirt, [32]" and on the CBS Evening News, Roger Mudd reported that "nobody, not in Government or out, really knows how many consultants there are, how much they get paid and whether the public is getting its money worth [47]."

He further remarked that:

> The pejorative term for consultants around Washington these days is Beltway Bandits. The Government expert who takes early retirement, sets up a small consulting firm, and then charges the Government twice as much to do his old job [47].

Such national attention and visibility forced OMB to promulgate, OMB Bulletin 78-11 which established policy and guidelines to be folbwed in determining and controlling the appropriate use of consulting services.

2. The Role of the Contracting Officer in Obtaining Consulting Services

While the approval of consulting service arrangements are required at a level above the requiring activity, the contracting officer must be the resident expert on the policy and guidelines effecting consulting services. He/she should know the reasons why consultants are called in. The major reasons are:

a. To obtain specialized opinions or professional or technical advice which does not exist within the agency or in another agency. Technology is developing and expanding too rapidly in many areas to allow Government engineers and technicians to keep fully abreast. Independent developments in industry, university, or foundation research can contribute to the core capability of many agencies [70:211].

b. To obtain independent outside points of view. Consultants are disassociated from the longevity of a particular project or program and can weigh issues on their relative merits rather than in light of political considerations [73:220].

c. To obtain the opinion of noted experts whose prestige can contribute to the success of important projects. In industry the consultant with the highest price is often viewed as the consultant with the highest prestige [28:132]. Thus, the contracting officer must ensure that he competitively buys value and not prestige.

d. Evading Parkinson's Law. By contracting for a short term task, projects that might inefficiently perpetuate beyond their useful life are terminated upon completion of the consultants contract [73:221].

e. The limitation of civilian personnel. OMB 78-11 prohibits the use of consulting services to bypass or undermine personnel ceilings. However, when the agency is responsible for the completion of certain projects, tasks or missions, but does not have the authority to hire the necessary staff, its only recourse, short of failure, is to award contracts in support of those projects, tasks or missions [73:220].

When asked by the researcher whether they would adhere to the prohibition of using consultants services to bypass civilian personnel ceilings if it meant failure of a project or mission, the agencies replied that mission support and responsibility took precedence over the limitation set forth by OMB 78-11.

3. Consultants and Competition

The Contracting Officer must ensure that contracts for consulting services are competitively awarded to the maximum extent practicable to ensure that costs are reasonable. John Rehfuss postulates that, with the exception of manpower shortages, the reasons for using consultants arise from information shortages or blockages within the organization. Thus the organization is unlikely to develop a sophisticated proposal or Statement of Work for a consultant

to meet therefore relying on the consultant to specify his service [70:211]. This may restrict competition in the form of the "preselection" of a consultant by the technical personnel requiring the service. The reliance on the consultant to specify his service may also result in an "informally solicited proposal," in the guise of an unsolicited proposal, based on informal communication of the Government's needs to the consultant [103].

These excellent "foot-in-the-door" techniques are utilized by many consultants and other white collar support contractors to obtain follow-on contracts on a sole source basis. As a result of "unique in depth knowledge", "qualifications" or "unique expertise" obtained during the performance of previous work", the contractor is assured of the follow on effort, and may enjoy a perpetual sole source position. A recent Navy Audit report found that of 32 Consultant/Engineering Services Contracts totaling $8.4 million, 28 (87%) were negotiated from unsolicited proposals on a sole source basis [52:7]. This not only severely restricts competition but strongly indicates that the contractors exercised substantial discretionary judgement in determining, articulating and accomplishing command management functions. Additionally, 31 of the 32 contracts were classified as personal service and therefore illegal, and most of the services found in 27 of the 32 contracts could have been performed by other Navy or DOD organizations [52:3-7]. Hence, the contracting officer must be extra

critical of proposed sole source requirements for consultant services. Many of the reasons given for the use of outside consultants are, at best, flimsy when evaluated in the light of alternatives [40:229].

As with other forms of contractor support services, the Statement of Work (SOW) is a major factor in successful competition of consultant contracts. It should be as brief yet specific as possible. To encourage creativity and innovation, the SOW should be written in terms of the agency's requirements specifying that the contractor will furnish "all necessary personnel, materials, and facilities to accomplish the task." An estimated level of effort to keep proposals within funding limits should be indicated by the government with interm milestones and the content of deliverable reports specified to provide a common base to evaluate the competing proposals [16:56].

Other areas of concern in promoting competition of consultant services include the factors delineated in the section of the Contracting Process in this thesis. Although general, they may be applied in obtaining consultant services.

However, a distinctive feature of contracting for consultant services is the reliance on experience, whether corporate or individual. Some firms list personnel who are highly experienced and qualified but who are actually dedicated to administration and management of the firm. In the wording of resumes, a description of a person's work may falsely project the individual's value in a project. For

example, words such as "participated in" or "assisted" may conceal his minor role in the project [28:131]. Usually, work performed for previous agencies or clients is often in as little detail as possible. This latter point is the major difference between consultant services and contractor support services and should be the evaluation factor with the highest weight in competing for consultant services. The differentiation among consultants is not prestige or price or advanced degrees but how many of their ideas or recommendations were implemented. This is the bottom line in source selection of a consultant, and feedback on the success of recommendation implementation may require the contracting officer to contact the agency who has been the recipient of the offeror's consulting services. If the consultant's recommendations were not implemented, the contracting officer should consider the consultant's competitors, or find out why the recommendations were not implemented. If the consultant's recommendations were implemented, and are applicable to the proposed requirement, the contracting officer should consider technology transfer between the agencies, thereby precluding the need for the consultant.

Contracting officers and line management should be judicious in the use of consultants. Indeed, they have been, according to OMB, who reported net reductions of 11.4 per cent (3,874) in numbers of consultant services used by the Government and 10.9 per cent ($197.1 million) in cost

during the period from June 30, 1977 to June 1, 1978 [10:A-11]. When properly used, outside expertise can provide valuable assistance in the conduct of agency business. Cost conscious source selection be based on past performance and success of recommendation implementation. But more often than not, the results of a consultant's efforts is a final report that decorates an executive's bookshelf with as much usefulness as The Life and Mores of the Pluvios Aegiptius would decorate his coffee table--and at considerably more expertise [28:133].

H. CONTRACT TYPES

The selection of the best contract type for a given situation or requirement is a major decision the contracting officer must make. The right type of contract can increase competition and benefit both the contractor and the Government. The contracting officer must consider many factors in determining what type of contract to use or negotiate in obtaining white collar contractor support services. Belden and Cammack delineate some of these factors as follows [2:120]:

1. The type and complexity of the item or service being contracted for.
2. The urgency of the requirement.
3. The period of contract performance.
4. The degree of competition present.
5. The difficulty of estimating performance costs because of the absence of definitive specifications, the lack of production experience, or the instability of design.
6. The availability of comparative cost data, firm market prices, or wage levels.
7. Prior experience with the contractor.
8. The extent and nature of subcontracting anticipated.
9. The relationship of risk and profit.
10. The benefits of incentives.

11. The technical capability and financial responsibility of the contractor.
12. Adequacy of the contractor's accounting system.
13. The administrative cost to both parties.

With these factors in mind, the contracting officer must decide whether to use a fixed-price contract or a cost reimbursement contract. Discussions on several contract types follow as they apply to contracting for white collar support services, with emphasis being given to the Indefinite Quantity/Labor Hour contract type. An analysis of two innovative methods to acquire these types of services by the Navy and the Air Force will also be offered.

1. Fixed-Price Contracts

In fixed-price contracts, the contractor agrees to perform a service for a specified price thus placing the greatest cost risk and performance risk on the contractor. The kinds of fixed-price contracts discussed will be Firm Fixed-Price (FFP), Firm Fixed-Price resulting from the two-step formal advertising method, and Firm Fixed-Price Level of Effort (FFP/LOE) as they are generally the only kinds of fixed-priced contracts that apply to contracting for contractor support services primarily because of the lack of definitive specifications. FFP contracts with economic price adjustment (escalation) and fixed price redeterminable contracts are normally for production items with provisions for labor or material adjustments based on published, established, or actual prices of specific materials or indicies. Fixed-price incentive-type contracts are intended

to encourage contractors to improve their cost, equipment and schedule performance on production-type items.

The FFP contract is the most preferred type of contract because the contractor theoretically assumes 100% of the risk and responsibility of performance. It requires the minimum amount of supervision and is used when a fair and reasonable price can be determined at the inception of the contract. It is particularly suitable for procurements of standard commercial items, when specifications are reasonably definite, production or service experience is present and costs can be predicted with certainty. Mancuso points out that continuous objections are raised against the use of the FFP contract for research and development (R&D) study efforts for various reasons including: a) this type of contract subjects the Government to the risk of not getting what it bargained for, and, b) the contractor's obligations cannot be defined in sufficient detail to warrant its use [43:27]. Mancuso asserts that a FFP contract may be used for R&D studies when the contract is for a paper study or documentation of some form, the statement of work and the RFP is well written and thorough, and when competitive market forces are present enabling selection of that firm that offers the most advantages to the Government. Several R&D studies are feasibility studies, concept definition studies, or alternative concept exploration efforts that may be the preclude to major on-going programs with potential for follow-on contracts. The contractor will perform at a firm

fixed-price not to maximize profit on the instant contract but to allow greater monetary gains to be deferred to later phases of the project or program. The motive for profit on future contracts compels the firm to perform in a highly effective manner in order to remain competitive. Therefore, concludes Mancuso, the FFP contract represents a proper application of the profit motive for R&D study contracts [43:29]. This argument may be made for most contractor support services. Danhof supports Mancuso's position formulating that a FFP contract is a more attrative alternative to the contractor than spending its own independent research and development (IR&D) funds to keep abreast of the state-of-the-art [17:245]. These points may be effectively used by the astute contracting officer in negotiating for contract type in a competitive (or even sole source) environment.

Successful utilization of FFP contracts for R&D studies or for similar contractor support services is completely dependent upon the integrity and comprehensiveness of the Statement of Work. This is true of all contract types but even moreso with the FFP contracts. However, there may be occasions when a FFP contract is desired but due to the uncertainty of the environment and inability of the Government to specify the desired outcome of the requirement with confidence, a level of effort is contracted for. In the firm fixed-price level of effort (FFP/LOE), the effort and number of hours are identified in the contract.

The contract is complete when the contractor expends the labor hours contracted for; the Government buys the contractor's best level of effort. A discussion of a unique Air Force FFP/LOE follows.

a. An Innovative Firm Fixed-Price Level of Effort (FFP/LOE) Contract

The Air Force Space and Missile Systems Organization (SAMSO) in Los Angeles, California, procured system engineering support services in a new and interesting manner [39]. The RFP contemplated a small business set-aside for a Firm Fixed-Price Level of Effort (FFP/LOE) contract awarded on the basis of a technical and management competition to that offeror whose proposal was deemed to be most advantageous to the Government on an overall basis considering past performance, level of experience, and quality, qualifications and specific disciplines of its technical staff. The Air Force predetermined that the estimated price of the effort would not exceed $900,000 for the first year, with an amount adjusted for economic growth budgeted for a one year option period. The Air Force further stated in the RFP that the level of effort expressed as the total number of engineering hours to be provided during the one year term was estimated to equate to a level of 11-12 person-months per month. Additionally, cost would not be scored or rated in determining contractor selection and the offeror was encouraged to submit his best proposal initially, the Government reserving the right to make award based on

initial submissions without further discussion or negotiations. The RFP also stated that the Air Force had no intention or desire to create an auction environment or to invite "buy-ins." This is an innovative approach because it establishes a price ceiling and does not consider cost as an evaluation factor.

This innovative method of source selection engenders controversy in several areas. The proponents of inserting a dollar threshold in the solicitation beyond which an award shall not be made claim that they are giving the offeror information helpful in the preparation of their proposal. In the real world competitive environment, some offerors, usually the incumbent, may informally learn of the funding ceiling available for a program or task. This knowledge gives them an unfair competitive advantage. By letting all offerors know the dollar ceiling or threshold, this unfair competitive advantage is negated. Disclosure of the maximum dollar threshold in the solicitation is also an effective way to buy value because with the threshold known to all offerors, cost is not a factor: competition is based on the quality of personnel and innovation management. Mr. Bill Rae, Chief Counsel for the Naval Supply Systems Command, objects to the use of dollar thresholds noting that the setting forth of the total dollar amount available for a particular proposal retards full and free competition, does violence to the minimum need theory, and does not allow for adequate use of a competitive standard and evaluation criteria [69].

In revealing a cost limitation or dollar threshold, proposals will be tailored to the specifications and the total dollar threshold instead of to the specifications alone which should set forth the Government's minimum needs. This severely limits competition for some firms may not compete even though they have the potential for submitting a good proposal because their price would exceed the stated maximum dollar threshold. Other offerors may increase their proposal cost because the forces of the competitive market place have been reduced. Mr. Rae further articulates that setting a maximum dollar threshold is in violation of both the spirit and letter of 10 U.S.C. 2305(g) which states that "proposals, including price, shall be solicited from the maximum number of qualified sources" and cites 114 Cong. Rec. 20736 as concluding..."that the competitive range encompasses both price and technical considerations...and that negotiation of a contract without price competition on the basis that a particular offeror would furnish services of a higher quality than any other offeror was contrary to 10 U.S.C. 2304(g) [69]."

The Air Force also stated in the RFP that submission of separate alternate proposals, providing rationale is included indicating why the acceptance of an alternate proposal would be more advantageous to the government, would be considered. This condition was included for those offerors who would meet the specifications below the threshold amount. For example, an offeror who could provide

the services required at $700,000 could submit an alternate proposal(s) for consideration in the amount of $200,000, thereby bringing the total cost up to the $900,000 threshold. This is in fact what actually occurred and Mr. Rae concludes that by considering an alternate proposal, the government has changed it requirements and therefore all offerors should be given a chance to respond to the change in requirement [107].

Despite the objections raised by the Chief Counsel of NAVSUP, this solicitation is viewed as a success by the Air Force. Front loading the solicitation with all known information, excluding numerical evaluation criteria, resulted in proposals so complete and comprehensive that award was based solely on the written proposals since the contracting officer determined that discussion and negotiation would not materially change the decision. This precluded any possibility of auction techniques, technical leveling, or buy-ins, and accelerated the contracting process. Most noteworthy, according to the SAMSO Contracting Officer, was that the successful offeror "beat out" the incumbent who was under a BOA at the time and whose position would normally have provided him with a competitive advantage [104].

b. Two-Step Formal Advertising

Formal advertising is characterized by invitations for bids which clearly describe the proposed contract. Interested firms then submit bids and the contract is awarded to the lowest responsive and responsible bidder whose bid is most advantageous to the Government, price and other

factors considered. Formal advertising is the preferred method of contracting as it is inteded to give all firms an equal opportunity to compete for government business. Formal advertising requires a specific requirement (usually a standard commercial product) and adherence to rigid and well defined procedures which results in a firm fixed-price contract.

In the white collar contract or support services and R&D environment, definitive specifications of the degree required for formal advertising are usually impossible to attain. A variation of formal advertising, called two-step formal advertising can be used with effectiveness in certain conditions.

Two-step formal advertising is designed to expand the use and benefits of formal advertising, competition, and firm fixed-price contracts where inadequate specifications preclude the use of formal advertising. The two-step formal advertising method may be used for acquiring the white collar support services. The procedure is conducted in two steps:

Step One consists of the request for submission, evaluation and discussion of the technical proposal, without pricing, to determine the acceptability of the services offered. The technical proposals are solicited under open competition from all interested sources. The understanding of the technical requirements and services required is enhanced in this step with full and open discussions with all interested offerors.

Step Two is a formally advertised proposal confined to those qualified sources who submitted an acceptable technical proposal in step one. Bids submitted in step two are evaluated without discussion and the award is made on the basis of price alone to the low bidder on a FFP contract.

Two-step formal advertising may be used when:

(a) The statement of work is not sufficiently definite or complete or may be too restrictive to permit full and free competition. Discussion of the technical aspects of the requirement is necessary to ensure mutual understanding between each offeror and the government.

(b) Funding is available at time of award.

(c) Definite evaluation criteria exist for evaluating technical proposals in order to establish minimum qualification for each offeror in step one.

(d) More than one technically qualified source is expected to be available.

(e) Sufficient time will be available for use of the two-step method.

(f) A firm fixed-price contract or a firm fixed-price contract with economic price adjustment will be used. No other type of contract is permitted when using the formal advertising method (DAR 2-503).

Some contracting officers voice concern over the imposed rigidity of the process; namely, no discussion or negotiation of price in step two. However, if step one

proceeded as intended, there is no reason to negotiate or discuss price in step two. The competitive marketplace has determined the most fair and reasonable price.

Of equal concern to many contracting officers is the inability to discern and eliminate the marginal contractor during step one. Since the technical evaluation criteria is based on the government's minimum requirements, the step one technical evaluation can only eliminate the unqualified offeror without setting a scale of acceptability of those remaining. When coupled with the low bid award in step two, the successful offeror is usually other than the offeror with the technically superior approach [95]. This approach does prevent the buying of value, however, and modifications to the two step process may be considered for buying value. This entails raising the government's minimum requirements in step one to those requirements desired by the government. Hence, the government buys value and at the same time eliminates "gold plating" --which often occurs when the government buys value with a cost type contract.

In conclusion, given adequate time and funding, the use of two-step formal advertising for acquiring white collar support services can increase a competition, reduce the government's administrative costs, and shift the cost risk to the contractor. It may, to a certain extent, be used to buy value and its expanded use should be encouraged.

2. Cost Reimbursement Contracts

Five types of cost reimbursement contracts will be briefly discussed in this section: Cost, Cost Sharing, Cost-Plus-Fixed-Fee (CPFF), Cost-Plus-Incentive-Fee (CPIF) and Cost-Plus-Award-Fee (CPAF). Cost reimbursement contracts are used by the contracting officer when the magnitude of the uncertainties in the Statement of Work precludes the use of an acceptable fixed-price arrangement. The Government is obligated to reimburse the contractor for all costs that are reasonable, allowable and allocable to the contract as defined in Section XV of DAR and the Cost Accounting Standards. Cost reimbursement contracts are used only after a formal determination has been made by the contracting officer that any other contract type will be more costly or that it is impractical to obtain services via any other contract vehicle. It is used in the following situations [63:V-26]:

1. When research and development work is required.

2. When the scope and nature of the work required cannot be definitely described or its cost accurately estimated.

3. When there is uncertainty concerning successful project completion.

Many requirements for white collar contractor support services fit the above criteria. When the requirement calls for buying value, pushing the state of the art, or exploring new concepts, the risk is such that a contractor will not accept a fixed-price contract.

From time to time the government may contract for R&D services provided by non-profit organizations or educational institutions. In a Cost Type contract, the government pays the DAR section XV cost with no fee. In development or research projects jointly sponsored by the government and the contractor, the government may pay an agreed upon predetermined portion of DAR XV costs without fee. This arrangement is termed a cost sharing agreement. A contractor may agree to this arrangement if future commercial benefits are anticipated, or to win an initial competitive requirement that may be the start of a potentially long running program. The corporate experience gained at cost could put the incumbent contractor in a favorable competitive position in future requirements.

The Cost-Plus-Fixed Fee (CPFF) contract provides reimbursement of the contractor for the costs that are determined to be reasonable, allowable, and allocable and provides for a fixed fee limited to 10% of estimated cost for service contracts and 15% of estimated cost for R&D contracts. CPFF contracts provide the contractor with little or no incentive to control costs and places the cost risk on the government. The contractor may find it advisable to increase his direct costs, thereby charging more of his overhead or indirect costs to the contract. He may also be able to justify high estimates on future contracts[25:232]. Requirement for preliminary research, exploration or study when the level of effort is initially unknown may result in

a CPFF Term contract. When the task or job can be more clearly defined and a definite goal or target can be expressed, a CPFF Completion contract may be negotiated.

A Cost-Plus-Incentive-Fee (CPIF) contract is a cost reimbursement contract with an incentive provision based on a target cost, target fee, minimum and maximum fee, and a share formula. It has the same fee limitations as the CPFF. DAR 3-405.4 states that its intended use is primarily for development and test requirements when the incentive formula can provide positive incentive for effective contractor management. The fulcrum of the entire incentive concept is the target cost. Belden and Commack advance that realistic targets will be impossible to attain if the government applies the pressures of competition for unreasonable concessions, or if the contractor is allowed to meet a competitive situation by offering buy in prices that are patently unrealistic [2:132]. However, even with these unrealistic targets, the CPF is preferred over the CPFF. In the case where the target cost is unrealistic, perhaps a FFP/LOE or CPAF would be more appropriate.

The cost reimbursement contract type that holds the greatest promise for the contracting officer is the Cost Plus Award Fee (CPAF) contract. DAR 3-405.5(b) states that the CRAF is suitable for:

(i) Level of effort contracts for performance of services where mission feasibility is established but

measurement of achievement must be made by subjective evaluation rather than objective measurement, and

(ii) Work which would have been placed under another type of contract if the performance objectives could be expressed in advance by definite milestones, targets or goals susceptible or measuring actual performance.

The CPAF contains a base fee (generally 3% or less) and a provision for the award fee to be adjusted upward (up to 15% of costs) commensurate with the contractor's performance evaluated during or after completion in accordance with criteria set forth in the contract. Belden and Commack espouse that its potential lies in procurements for term level of effort contracts, including R&D programs for which the performance characteristics and requirements are not sufficiently clear or definite at the start of a project to use a standard incentive type contract [2:133].

Advantages of this contract type in contracting for white collar contractor support services are numerous:

(a) Top management attention. The government award fee evaluation board may be comprised of high agency management who are kept abreast with milestone attainment and contractor performances. Performance problems can be nipped in the bud.

(b) Enhances open communication between the company's top management and government top management.

(c) The award fee determined by the award fee evaluation board is a unilateral action and can not be disputed by the contractor.

(d) Requirements that are subjective in nature (i.e. level of effort, R&D or management studies, test evaluation, software development) should be evaluated subjectively.

Perhaps the greatest advantage of the CPAF contract is that it may be used to promote effective competition. A firm that has confidence in its ability to provide the service required has an incentive to offer a proposal at the lowest cost possible with the knowledge that if performance is outstanding, the maximum fee can be attained. Even when buying value, costs are an important factor in contractor selection with CPAF contracts. The "value" is evaluated by the evaluation board during or after performance. "Buying In" is also discouraged with this type of contract: a contractor who exceeds the negotiated estimate of cost during performance may receive a minimum amount of award fee. In short, the CPAF contract offers many advantages to the contracting officer. It encourages a more effective and economical effort and outcome by periodically evaluating performance and adjusting the fee upward or downward, in accordance with evaluation results.

3. The Indefinite Quantity/Labor Hour Contract

The Indefinite Quantity/Labor Hour Contract poses a unique challenge to contracting officers. It contains elements of both the fixed price contract type and the cost reimbursement contract type. Used improperly, this type of contract can severely restrict competition, is an "easy way out" for both the customer and contracting officer, and is

a candidate for a contract administration nightmare, and perhaps even fraud. Used properly, this type of contract is a flexible tool for the contractor, customer and contracting officer in contracting for engineering/technical contracting support services. This section will look at the applicability, advantages, and disadvantages of this type of contract, analyze the current debate within the Navy Field Procurement System concerning its use, and discuss the current Naval Air System Commands pilot plan for consolidating the procurement of certain contract or support services into one competitive indefinite quantity delivery type contract.

The Indefinite Quantity/Labor Hour Contract provides for the purchase of contractor support services on the basis of payment for labor performed at a fixed hourly rate that includes direct and indirect labor, overhead, and profit. Its use is limited to those conditions where it is not possible to estimate with any degree of confidence, the duration and cost of the services required at the time the contract is placed. By its very definition the Indefinite Quantity/ Labor Hour Contract restricts competition. The statement of work is very broad and general in scope; the exact nature, extent and duration is not known at time ofaward. Ruben Israelian terms this "fictitious competition" for how can a contractor compete if he doesn't know what he's competing for [93]? What the offeror proposes are labor rates for particular labor categories. The fallacy is that the low offeror can actually cost more to the government. It could

take the low offeror longer to complete the task than a contractor who offers a highly qualified person at a higher rate who completes the task in less time. Proper evaluation of the broad statement of work is nearly impossible; how could it be otherwise when a company's efficiency in the performance of work (as yet undefined) cannot be assessed [44:84]?

A discussion of other problems inherent in Indefinite Quantity/Labor Hour Contracts follows:

(a) Once the basic contract is awarded, task or delivery orders specify the task to be performed, the labor category, the number of hours, the hourly rate and the ceiling amount for the order. The total price increases as the number of hours performed increases up to the ceiling, with no incentive provisions for cost control.

(b) Government surveillance is essential to ensure performance is not inefficient or wasteful. Proper administration costs are high and delivery orders are often administered by personnel with little knowledge of the regulations of the law. Generally, the Indefinite Quantity/Labor Hour Contract is rarely audited after award [44:86].

(c) The lack of management control of this type of contract is of primary concern to the Navy's Contract Management Review (CMR) teams. An overly general statement of work may permit an ordering activity to abuse the contract, personal services situations may emerge, and in some cases

is an invitation to fraud. (One CMR found the ordering officer also signing and certifying invoices [84].

(d) The contractor can substitute high labor rates for those tasks that require lower rates and shift hours from one order to another to avoid under/overuns, frequently resulting in the final order billing price exactly equalling the ceiling price. This should be a very unlikely occurence on a labor intensive order [44:85].

The advantage of the Indefinite Quantity/Labor Hour Contract is the flexibility it provides the contracting officer and ordering officer. Orders are placed only after the need arises. The contracting officer may authorize the ordering officer to approve and sign all tasks or orders under the master contract. The tasks take less time to process than the normal processing time to award an individual contract to cover the requirement. In addition, funds are furnished on a task basis and are not available prior to the determination of the need for a particular task. Therefore the customer project or program manager can obligate funds as they become available and the Indefinite Quantity/ Labor Hour Contract is the most responsive to his needs.

In summary, the determination to use an Indefinite Quantity Contract with a Labor Hour pricing arrangement is dependent upon a series of questions that must be addressed by the contracting officer [96]. (a) Can the tasks be sufficiently defined and can a specific level of effort for the contract period be specified in the planning stages of

the contract requirement? (b) Are funds currently available to cover the required tasks? (c) Is the urgency of need such that the required response time precludes the normal contracting process? (d) Is there any other type of contract that can be used?

This latter point deserves further attention inasmuch as the Indefinite Quantity contract is the least preferred of contract types. A determination must be made by the contracting officer that no other contract type such as a Firm Fixed Price (FFP), Cost Plus Fixed Fee (CPFF), CPFF term or Basic Ordering Agreement (BOA) would suffice for those requirements exceeding $10,000.

The problem with the FFP contract for requirements that may qualify for an Indefinite Quantity/Labor Hour Contract is two fold: first, the statement of work cannot be specifically defined at the date of contract award and secondly, funds are not available. While the cost type contract does not require a specifically defined statement of work, funds must be available to cover the contract period. The CPFF term type contract incurs the same funding problem described above. Additionally, while the requiring activity may be able to estimate the number of hours required during the performance period of the contract, they usually cannot do so with sufficient confidence to establish a specific level of effort to be performed during a specified period of time insofar as the tasks come from various sources at various times. Resultantly, there is no basis on which

to negotiate an appropriate fee. A BOA is not considered appropriate for this type of requirement for two reasons. First, some requiring activities do not have Contract Authority and, therefore, would not be authorized to issue an order under a BOA. Second, the task response time is too short considering the time necessary to follow DAR procedures for orders under a BOA. These include competitive quotes, synopsis requirements, and the need to solicit other than the BOA holders. While the contracting officer must make these determinations, the end user, usually the project manager, is in the best position to issue the individual order specifying the exact nature and duration of the work to be performed [56]. However, for control purposes a delivery order officer (GS1102 series) trained in contracting or the contracting officer should issue the individual orders [96].

a. Navy Field Procurement System Debate

The different perspectives concerning flexibility and customer response on the other hand, and lack of contracting officer control on the other, can be seen by the ongoing controversy between the Naval Regional Contracting Office (NRCO) in Washington, D.C., and the David W. Taylor Naval Ships Research and Development Center (DTNSRDC), Bethesda, Md. Under the Navy Field Procurement System, it is the Naval Supply Systems Command (NAVSUP) policy to maximize the effectiveness, efficiency and responsiveness of the NRCO's at the highest levels of contract complexities

generated within each procurement region. DTNSRDC is a field activity with contracting authority up to $100,000. Those contract requests over $100,000 are forwarded to NRCO Washington for action [58:par 1030]. Currently, NRCO Washington is the Contracting Office for twenty Master Indefinite Quantity/Labor Hour contracts with DTNSRDC's contracting officer's authorized as ordering officers. NRCO Washington proposes to withdraw DTNSRDC's Ordering Officer status and to compete the Indefinite Quality/Labor Hour Contracts upon expiration as a series of CPFF level of effort contracts citing lack of control and a statistical reporting problem. NRCO negotiates the master contract and does not receive statistical procurement credit for the tasks issued from DTNSRDC. This also detrimentally effects grade levels and personnel ceilings of NRCO. DTNSRDC defended the use of the master indefinite quantity type contracts to the Chief of Naval Material based on the responsiveness and funding flexibility, and assaulted NRCO's concern with statistical credit as "action that subordinates the operational need for responsive and timely contracting to an administrative statistical need [18]." Yet a third player is introduced into the as yet unresolved debate, because DTNSRDC, as a Navy Laboratory, reports to the Chief of Naval Material for its line Research and Development mission even though, as a field activity of NAVSUP, DTNSRDC procurement authority and support is determined by NAVSUP [58].

The use of the Indefinite Quantity/Labor Hour Contract will always be the preferred method for government technical personnel for contracting for white collar support services. As summarized by Mike Stanton of DTNSRDC's Systems Development Department [112]:

> In the R&D environment we can't predict or define our contract needs with any degree of certainty. With this type of flexible contract arrangement, the Center is able to sell its programs to sponsors at the SYSCOMS because of our responsiveness. And with the uncertainty of the funding situation, we are often in the reaction mode to Crisis Management by the sponsors.

Industry echoes the same conclusion; not only is it the "only way to go" but its a great marketing device for the contractor holding an Indefinite Quantity Contract because it acts as a "hunting license" for the program manager looking for a way to spend dollars in support of his program with the minimum amount of time and red tape[109]."

Some small business representatives claim that the Indefinite Quantity/Labor Hour Contract restricts competition to large business. This is usually not the case because the labor intensive aspects of these contract types do not require large capital outlays as would be the case in production contracts. Additionally in the engineering/ technical services arena there is no such thing as sole source due to the broad statement of work. However, there may be a most qualified source for certain tasks. Thus, even after the Indefinite Quantity/Labor Hour Contracts have been awarded competitively, there may be competition between the contract holders for specific tasks.

b. The Consolidated Logistics Support Indefinite Quantity Labor Hour type Contract--A Pilot Plan

The singularly most innovative approach to contracting for contractor support services in the Navy is a pilot plan executed and managed by the Naval Air Systems Command for the Logistics/Fleet Support Group, NAVAIR 04. During FY 1977, 145 separate cost type contracts with 50 contractors totaling $13.6 million dollars were awarded for contractor support services through NAVAIR's Naval Air Engineering Center (NAEC) Lakehurst, New Jersey facility. The effort required to initiate, award, and administer such a large number of relatively small contracts severely taxed the Air 04 staff. It was determined to be more economical to consolidate the NAVAIR 04 logistics support requirements into one large scale RFP with three separate lots. An indefinite quantity labor hour type contract was contemplated with award made by lots, to support air vehicles, missiles, ground support equipment, training, propulsion and avionics [42].

c. Advantages and Disadvantages of Consolidated Procurement

The concept of consolidated procurement has definite advantages:

(1) Providing for centralized contracting with attendant visibility and control, thus eliminating fragmented and duplicate contract actions assigned to field activities.

(2) A single contractor is responsible for the total management effort involved.

(3) Maximization of competition for support services contracts. Some may argue that consolidation tends to restrict competition, since a smaller number of firms would be able to undertake a large complex contract than would be the case if a number of smaller contracts were awarded. This is particularly the case with many small business and minority business enterprises. However, in NAVAIR's pilot plan, competition was enhanced and all three lots were completed as small business set-asides.

(4) Providing control for the minimization of personal services situations in both the award and administration of these support services.

(5) Reduced administrative costs since fewer government personnel are required to administer a large contract than several smaller contracts.

(6) Total contract costs may be reduced through economies of scale.

Arguments against consolidation include:

(1) The reduction of competition. This may occur if the statement of work is too complex or if the scope of work involved is beyond the reach of small business or minority enterprises.

(2) Higher costs in overhead where significant subcontractor effort is involved.

(3) Consolidation may preclude the use of firm-fixed price contracts.

NAVAIR weighed the advantages and the disadvantages knowing that their pilot plan would attract the interest of other contracting officers, Congress, Civil Service Commission, and various unions. Despite the initial slow progress and difficulty of combining the over 140 contracts into one consolidated solicitation, the pilot plan was implemented with the hope that it would "attract lively competition from the private sector and would lead to an increase in the level of technical control and procurement discipline [42]."

The lesson learned to date on the pilot plan is the reduction of administration burden required to monitor indefinite quantity contracts rather than 145 cost type contracts. A relaxation in the experience required in the statement of work would have increased competition, although as far as competition is concerned, the pilot plan was an immediate success. Concludes CDR Ligon of NAVAIR, "It is too early to assess the total success of the effort but so far it looks good[102]."

IV. IMPROVING THE CONTRACTING PROCESS TO INCREASE COMPETITION OF CONTRACTOR SUPPORT SERVICES IN THE PRE-AWARD PHASE

Before addressing the specific processes in the pre-award phase of competing for contractor support services, we must look at a key element that has a direct bearing on the success or failure of any contract action--education. Education and training by the contracting officer falls into two general categories:

1. Customer Education: quarterly or semi-annual training sessions should be held with functional managers and customers to familiarize these personnel with the capabilities and restrictions, do's and don'ts, and applicability and limitations of the DOD contracting system. Procurement Planning, competition, a brief overview of the DAR, and a general understanding of the contracting process should be stressed with the bottom line being that every contractual action requires a team effort between many players and an important player is the customer. The most successful contracting offices develop procurement or contracting guidelines written in laymen's terms emphasizing the importance of customer/contracting officer interaction, communication, and feedback.

The extent of and effectiveness of competition is directly influenced by both education and planning. By working with contracting personnel in the earliest stages

of the procurement, adequate time for the competitive process can be allocated and planned.

2. Education of Contracting Personnel. In addition to the mandatory DOD courses required for contracting personnel (GS-1102 series), in-house training sessions promoting cross-fertilization of experiences and new ideas are encouraged. These sessions can emphasize the Government's policy on competition and innovative techniques or successful past methods of securing competition may be "brainstormed" or analyzed. Participation in National Contract Management Association (NCMA) activity can further benefit contracting personnel, as well as pursuing undergraduate and graduate management and business courses. The goal of each contracting officer, contract specialist, contract negotiator or contract administrator should be to increase his or her professionalism.

Professor Ralph Nash, at the 1979 National Contract Management Association Symposium, Washington, D.C. submitted that the number one problem in procurement and contracting today is a "people problem and not a process problem." Effort by the contracting officer to educate and train both contract personnel and users, i.e., attacking the "people problem," can go a long way in solving the process problem[48].

A. MAJOR PRE-AWARD CONSIDERATIONS

The contracting officer's efforts in a successful pre-award phase of the contracting process should include consideration of many factors. The factors addressed here will be:

1. Determination of the type of service required
2. Formulation of the acquisition strategy
3. Competition

Subfactors under each of the above major categories will also be addressed. Although the contracting officer is responsible for addressing these factors to ensure that the competitive contracting process is accomplished satisfactorily, coordination, communication and integration with the customer and other personnel is necessary. These factors and subfactors will be presented in a general chronological order.

A planning or acquisition strategy meeting between the functional managers (key customer players) and the contracting officer or his representative should be held as soon as the functional manager knows he intends to contract out. The earlier this is done the better enabling the contracting officer and the customer to coordinate their efforts to foster a successful contract. The initial meeting should address the following factors in general terms allowing the participants to commence effective planning necessary for the successful implementation of the competitive acquisition strategy.

1. Type of Service

A determination of the service required must be made to enable the contracting officer to intelligently participate in the acquisition strategy. Consideration of many elements form the foundation of a sound acquisition strategy. These elements include:

a. The determination that the type of service contract required is for one (or more) of the twenty two services defined by DAR 22-101. These services may be performed by one of three categories of services as defined in part 1 of this thesis:

(1) Expert and consultant services

(2) Contractor Support Services

(3) Commercial or Industrial (C/I) Activities Support Services

b. Personal vs. nonpersonal services determination. Pursuant to DAR 22-102 and SECNAVINST 4200.6, a Personal Services versus Nonpersonal Services Questionnaire must be prepared by the customer or line manager for submission with the purchase request. A determination that the services required are nonpersonal is then made by the procuring contracting officer. Concurrence in that determination is required by legal counsel and approval of the questionnaire is required by a level higher than the contracting officer.

c. Compliance with OMB 78-11 by the contracting officer, if the use of temporary nonpersonal service

consultants is requested. Personal service type consultants must be obtained through the personnel officer in accordance with the Civilian Personnel Manual. In certain limited conditions it is desirable for the Government to have that sort of supervision and control which is generally improper (personal services) but where the short duration of work dictates against hiring or appointing in accordance with Civil Service laws. Authority under 5 USC 3109 (DAR 22-201) may be used for contracting out for the personal services of experts and consultants on a temporary or intermittant basis. This authority is very limited in scope and requires Higher Procuring Agency (HPA) approval.

d. The applicability of the Service Contract Act must be determined. As addressed in the body of this thesis, the Service Contract Act, as amended, applies to white collar services as well as blue collar services. The contracting officer must request a wage determination from the Department of Labor for any contract which exceeds $2,500 on Standard Form 98, "Notice of Intention to Make a Service Contract and Response to Notice." This request must be filed not less than 30 days prior to commencement of negotiations.

e. If the requirement for contractor support services involves an aggregate obligation of funds in excess of $50,000, the requirement must be reviewed and approved by the commanding officer at the field activity level (NAVMAT

INST 4200.52). This must be accomplished prior to the receipt of the request for services by the contracting officer.

2. Acquisition Strategy

The acquisition strategy in the pre-award phase commenced when attention was directed to the major category reviewed previously in determining the type of services required. With this background information, the contracting officer, teamed with the customer or line manager, can prepare and implement the acquisition strategy. Factors for consideration include:

a. Complex and costly services may require a formal procurement plan complete with milestones in accordance with DAR 1-2100. The principles of this formal procurement plan are sound and have application to any service contract request.

b. The cost considerations of the required services must be evaluated. The significance of independent Government estimates has been stressed in the prior discussion of Indefinite Quantity/Labor Hour contracts (for task or delivery orders), as well as other contract types. Of equal significance is the dollar threshold approval level within the agency or activity. The approval process for the various thresholds may be time consuming and the threshold levels differ from activity to activity depending on procurement authority and other factors. The contracting officer must be cognizant of the various threshold approval

levels and plan accordingly. An example of these threshold approval levels may be found in Exhibit II.

c. An important factor that must be addressed is the timeframe involved in the contracting process, including the procurement administrative lead time (PALT), the required award date, the duration of performance, and the contract completion date. Both the PALT and award date are directly affected by the adequacy of planning, the complexity and estimated cost of the required services, the completion of a conclusive statement of work (SOW), evaluation criteria and RFP, the obtaining of the required approval signatures, and other administrative considerations included in the following sections. For example, without effective planning, a customer incorrectly may base a sole source justification on the urgency of the procurement request: the urgency may actually be a result of the customer's procrastination in planning rather than a bonafide urgent requirement.

The interdependence and proper phasing of the various elements in the contracting process may be seen by another example showing the detrimental effect on the total contracting effort. If a SOW is late in arriving from the technical customer, at least two problems may occur. The contract award may be delayed resulting in a late delivery or late contract commencement of the services required, or the solicitation time may be compressed, resulting in reduced competition and possibly higher prices [116].

Other time considerations that may affect price and the comprehensiveness of the service performance concerns the time required for contract completion after award. A condensed performance schedule may be a) more expensive i.e., the Government buys the contractor's over-time, and, b) the lack of performance time may result in an incomplete service. The duration of contract performance may also be affected by option provisions. When requirements or funding for additional services are anticipated but not firm, it may be appropriate to include an option in the contract (DAR 1-1502). Under an option, the contracting officer may elect to purchase additional services of the same type within the period of performance of the basic contract or under an extension. The option may act as a form of incentive--the contractor is motivated to perform satisfactorily because of prospective additional work. On the other hand, the exercising of an option restricts the opportunity for competition. The contracting officer must consider these factors, as well as fund availaibility, in his decision to include an option clause in a contract.

Transition plans to phase from one contractor to another may be necessary. When the incumbent contractor fails to obtain the follow on contract, some set of phase-in/phase-out provisions must be considered.

d. Funds availibility and source of funds must be considered. Annual funds such as Operations & Maintenance, Navy (O&M,N) must be obligated during the current appropriated

year. Contractor support services may also use Research, Development, Test and Evaluation (RDT&E) funds, a multiple year appropriation available for incurring obligations up to two years after the funds are authorized, depending upon the type of service needed. This multiple year appropriation offers the contracting officer more flexibility than the annual appropriation. The availability of funds is also a major consideration in the contracting process. The contract commencement date, level of effort, extent of services, option provisions and contract type are all dependent on the availability of funds and their apportionment.

e. The foundation of the RFP, the acquisition strategy, and the competitive contracting process is the Statement of Work (SOW). In preparing the SOW, the following elements must be considered [59:4-1].

(1) a general description of the required objectives and desired results.

(2) background information helpful to a clear understanding of the requirements and how they evolved.

(3) technical considerations.

(4) a detailed description of the technical requirements and tasks.

(5) a notation of reporting requirements and any other deliverable items, such as data (documents, studies, reports).

(6) other special considerations.

Preparation of the SOW should be a comprehensive and dedicated effort by the customer or line manager. Additional considerations are delineated in the SOW section in Chapter III of this thesis.

f. Building upon the SOW are the evaluation criteria required when award is to be based on factors other than cost. The evaluation may be accomplished by a Board consisting of the customer, in-house technical personnel familiar with the requirement, and independent evaluators familiar with the technical expertise required. The composition of the Board is dependent upon financial thresholds that differ from activity to activity. The section on Evaluation Factors in Chapter II addresses major considerations of the evaluation process including objectivity, general quality and responsiveness of the proposal, technical approach, the organization, capability and personnel experience of the offeror, past performance and risk assessment.

g. The selection of the contract type best suited for a given situation or requirement is a major decision the contracting officer must make. The right type of contract can increase competition and benefit both the contractor and the Government. The many factors the contracting officer should consider are discussed in the Contract Types section of this thesis.

h. Will the contractor require or have access to classified information, material or areas during performance of the contract? If so a DD Form 254 "Contract

Security Classification Specification," and a DD Form 254C if there is no security classification guide for the project or task involved, must be approved by the security officer.

i. What are the data requirements of the proposed contract? Is proprietary data involved? If data is to be delivered under contract, a Contract Data Requirements List (CDRL), DD Form 1423, and a Data Item Description (DID) DD Form 1664 may be required in accordance with DAR 7-104.9 and 9-505 respectively. The data requirements may also need approval from a Data Requirement Review Board (DRRB) or a designated data Manager. The acquisition of data, and its proper management can increase competition in future contracting efforts.

j. If patentable inventions are likely to result from the performance of the contract, the Government must determine what rights to acquire. In accordance with DAR 9-107.2 and 7-302.23, a patent rights recommendation must be made by a patent counsel to the contracting officer.

k. Who will administer the contract? Although this thesis does not address contract administration, its importancein the pre-award phase cannot be overlooked. Contract administration covers the whole post-award phase and includes such functions as contract surveillance, inspection and acceptance of services, and payment of invoices. The administration of these services is normally performed by the Contracting Officers Technical Representatives (COTR) in accordance with SECNAVINST 4200.27A and NAVSUPINST 433.6.

1. The compilation and integration of the preceeding factors form the Request for Proposal (RFP), the vehicle used to communicate the Government's needs to the offeror in a negotiated procurement. As most of the requirements for contractor support services are procured by the negotiated method, as supported by Chapter II of this thesis, on occasion these same factors may be built in an IFB to foster competition using the two-step formal advertising method. Given sufficient proposal preparation time and applying the factors addressed herein, the contracting process may be used to promote and perpetuate competition for contractor support services.

3. Additional Competition Considerations

The importance of competition, both price and technical, has been previously addressed in this thesis, as has the requirement for effective competition. The need for increased competition for contractor support services has also been emphasized in light of the Government's growing reliance on these services due to manpower constraints precipitated by budget reductions. It was pointed out that early planning, education of the participants in the contracting process, and an understanding of the basic problems associated with contractor support services are the foundations of effective competition for these services. Further considerations to assist in the promotion of competition include the adequacy of the sole source justification, actions of the

Contract Review Board (CRB), finding potential sources, and avoiding conflict of interest situations.

When only one contractor and no other is qualified to perform a service, the purchase request must be accompanied by a sole source justification. This justification must be approved by the contracting officer of Contract Review Board. (See Appendix A) A sole source justification must clearly and conclusively demonstrate that only the services of a particular firm will satisfy the actual, minimum needs of the requirement. All justifications must be concise (no more than one type written page) and specifically state why the proposed procurement cannot be made on a competitive basis by demonstrable assertions that logically support that conclusion while logically excluding other possibilities. Sole source justifications should be presented by the customer, project engineer, or drafter to the contract review board.

This study will not attempt to offer a "guide" to sole source justification writing. Detailed criteria for defining or justifying a sole source are not provided by law or regulation. Each justification must stand on its own and the contracting officer and contract review board must be critical of inadequate sole source justification. The contracting officer must question any weakness in a justification and put the burden of proof on the drafter of the justification. RADM E. A. Grinstead, SC, USN, Commander, Naval Supply Systems Command, summarized many problems of sole source justifications in a letter sent to the commanding officers of major Navy Field Procurement Activities [33]:

...many sole source justifications attested to the competence of the chosen contractor but did not explain why other firms could not perform the services. No specific qualifications that only the chosen firm possessed were spelled out. In fact, some justifications were written by the contractor for the government official's signature! As a result, most justifications, though for very different services, were virtually identical. This signals a wholesale disregard for the policy of obtaining the maximum possible competition.

A recent Naval Audit Service audit found that 97% of the sole source justifications of one Navy Field Procurement activity were approved eventuallyby the contracting officer or the contract review board even though many of the justifications were questionable [53:1]. Another Naval Audit Service report found that many procurements are awarded sole source for "convenience" rather than as the most appropriate and cost effective type of procurement [54:15]. The same audit also found that:

The primary reason for misuse of sole source is apparently to award a contract to a preselected contractor. Many of the procurements are for continuation of services already obtained by contract; therefore the requirements are known well in advance and there is ample time to solicit competition.

Aside from the contracting officer's early involvement in contract planning which in turn should ensure the integrity of the competitive process, the requirement by the contracting officer and the contract review board for a strong, conclusive, demonstrable sole source justification is the singularly most important measure that can be taken by the contracting officer to increase competition. This requirement forces the line manager or customer to start contract planning in the early stages of requirements determination, rechanneling his or her

energy to the competitive process: planning, drafting the statement of work, developing evaluation criteria, and providing the contracting officer with possible sources. As pointed out in Chapter II of this thesis, a consistently tough and aggressive contract review board can help in this process by forcing line management to think "competition" up front. Competition--not sole source contracting--should be the rule rather than the exception.

a. Finding Potential Sources

Once the technical manager is thinking "competition" rather than sole source, many services are so specialized that the competing community may be small--and the technical manager should be able to provide a list of potential sources with his purchase request. Each activity should develop their own source list based on historical demand or input from other field activities.

The small business specialist at the activity level can assist in identifying prospective contractor support service contractors. The small business specialist should be eager to assist the contracting officer due to the "attractiveness of service contracting for fostering small business procurement programs [79:14]." This applies to both small business and minority business (8A) enterprises.

Potential contractors may be identified by an announcement in the Commerce Business Daily (CBD) inviting interested firms to submit their qualifications and capabilities in a specific area. The use of the CBD is required for Request for Proposals (RFPs) and awards over $10,000.

A solicitation for information or planning purposes, Request for Quotation (RFQ), or a letter of intent may be issued to perspective contractors to determine the feasibility of performance, existence of ideas or prior work in research and development, or seeking technically advanced contractor support services contractors. The use of the RFQ requires the approval at a level above the contracting officer and responses to RFQs cannot be used as the basis for awarding a contract.

Prospective contractors may also be found or encouraged to participate by holding a pre-proposal or pre-bid conference. While the SOW and RFP should stand on their own, the presolicitation or pre-proposal conference is an effective problem avoidance technique where questions can be answered, misunderstandings can be resolved and input from industry may be utilized to improve the quality of the contracting process for the proposed contract. With this free and equal communication of Government requirements, "inside tracks" that may give one offeror a competitive advantage may be avoided. A post-award conference may also be helpful to an unsuccessful offeror for future requirements.

b. Organizational Conflict of Interest

Possible organizational conflict of interest situations can be avoided by planning, education, and effective Contract Review Board actions. Organizational conflict of interest comprimises the integrity of the contracting process. The following examples demonstrate a

contractor's unfair competitive advantage over other sources and therefore should not normally be considered as a prospective source:

(1) Government employees or business organizations which are owned or controlled by Government employees should not be considered as potential sources.

(2) Procurement of a system or service for which the contractor provided systems engineering or technical direction.

(3) Competitive procurements of services in accordance with specifications or statements of work the contractor drafted or assisted in the preparation of; and

(4) Competitive procurements resulting from, or in the same field, as a Government study the contractor performed that required access to the proprietary data of other contractors.

The provisions of DAR Appendix G, "Rules for the Avoidance of Organizational Conflicts of Interest," should be reviewed where the possibility of such a conflict of interest exists.

B. SUMMARY

With aggressive and early planning, consideration of the preceeding factors, and a conclusive RFP, the contracting officer is well underway to a successful completion of the Pre-award phase. In "front loading" the contracting process, the contracting officer has smoothed the way for problem minimization in the source solicitation phase, source

evaluation phase, negotiation phase, and source selection phase. These successful phases in turn, have paved the way for a more effective and efficient award phase and post-award phase. In short, by building a foundation through the applications of the elements discussed in the preceeding sections and the normative pre-award phase in the contracting process, competition for contractor support services can be increased resulting in improved contractor support of the Navy's and DOD's mission.

V. CONCLUSIONS AND RECOMMENDATIONS

The researcher would make the following conclusions and recommendations based on the study and research presented in previous chapters. The conclusions lend themselves to immediate subsequent recommendations and therefore each conclusions will be followed by a specific recommendation consistent with the nature of the conclusion.

1. Conclusion: There is an increasing use of contractor support services at all levels within the Navy Command structure coupled with a steady decline in competing for these services. The contracting officer must be cognizant of the many complexities and problems inherent with competing for contractor support services.

Recommendation: The contracting officer should be unfailing in his/her efforts to understand the nuances of contractor support services and to promote competition of these services. By synthesising and applying the concepts concerning the competition of contractor support services surfaced in this thesis, the contracting officer can make positive headway in satisfactorily answering the central research question of this thesis, "Is it feasible for the contracting officer to improve the extent of competition of contractor support services?" The answer is an unequivocal "AFFIRMATIVE" and rests with the professionalism, diligence, and aggressive enthusiasm displayed by the contracting officer.

2. Conclusion: There is a lack of aggressiveness on the part of many contracting officers and Contract Review Boards to unify the efforts of contracting personnel and Government technical personnel and line management towards increasing competition of contractor support services. This is evidenced by the literature in this field and by those Naval Audit Service and Contract Management reviews, and research findings reported in this thesis.

Recommendation: Training and education programs on basic contracting should be implemented by the contracting officer to force technical customers to think "competition" up front in the contracting process. This, in conjunction with energetic and forceful contracting officer and Contract Review Board actions, should redirect the time spent on sole source justifications to time more constructively spent in developing conclusive statements of work, evaluation criteria, and incentive preparation of requirements that increase effective competition. The contracting officer must successfully apply his/her knowledge and understanding of the problems inherent in competing for contracting support services to the contracting process. These actions would significantly increase competition for both contractor support services and consultant services.

3. Conclusion: Although there is high level management concern and emphasis regarding personal versus nonpersonal services, there are no definitive rules for determining whether services are personal or nonpersonal. Oftentimes

the distinction between the two is nebulous at best. Personal service situations generally arise from the lack of education and training and not from the lack of integrity.

Recommendations: The contracting officer should take positive action to educate technical and contracting personnel alike in dealing with the personal vs nonpersonal dilemma. The contracting officer must possess an understanding of past contract law pertaining to contract support services and should work closely with legal counsel, contracting officers technical representatives (KOTRs), and other technical personnel to avoid personal services situations.

4. Conclusion: The evaluation criteria for contractor support services as currently used is not structured appropriately to accomplish its intended objective. Relevant information that would increase competition is frequently withheld.

Recommendation: All information that would assist the offeror in the preparation of a competitive responsive proposal should be divulged and specifically delineated in the Government's requirement, including the disclosure of precise numerical relative weights. This information would ensure the integrity of the contracting process, simplify the evaluation process, streamline the RFP, and improve effective competition in negotiated contracts for contractor support services.

5. Conclusion: The statement of work (SOW) is the cornerstone of successful competition of contractor support services. With the reduction in Government personnel and the increase in mission responsibilities, Government technical personnel are giving more attention to the preparation of the SOW.

Recommendation: The contracting officer should focus his/her attention on working closely with the Government technical personnel in the preparation of a conclusive SOW particularly in the early stages of the contracting process. The contracting officer and the Government technical personnel must be familiar with the Military Handbook 254A, Preparation of the Statement of Work (SOW).

6. Conclusion: From its enactment in 1965, the Service Contract Act has been fraught with problems, has engendered disputes and controversy, reduced the flexibility of contracting officers, and is in direct contradiction with several national policies. The Act restricts competition, is administratively burdensome to both Government and industry, and is highly inflationary. The forces of the competitive marketplace--not legislation--should determine the price the Government pays for contractor support services.

Recommendation: The Service Contract Act, as amended, should be repealed. As supported in Chapter III, the repeal of this "bad legislation" would increase competition, curtail the inflationary spiral it imposes on successor contracts, reduce conflict between the Department of Labor (DOL) and other

agencies, shorten the contracting process, and give the professional contracting officer authority commensurate with his/her responsibility.

7. Conclusion: Most incumbent contractors enjoy a strong competitive advantage for follow-on contracts. Reasons include familiarity with Government personnel and missions, Government emphasis on past performance, data rights and other "unique knowledge and expertise" gained during contract performance, and the "successorship obligation" under section 4(c) of the Service Contract Act. Recommendation: Although the contracting officer is not obligated to neutralize the incumbent contractor's competitive advantage, an "arms length" relationship must exist at all times between the Government and the incumbent contractor and proper surveillance during contract administration must be maintained. The reduction of informal communication (e.g. conversations which might provide helpful information to a contractor not available to competitors), the elimination of Government generated "solicited proposals", and ensuring that all competiting contractors are treated fairly and equally will promote effective competition.

8. Conclusion: While the rapid growth of consultant services has subsided in recent years, the number of consultant contracts remains significant. The judicious use of consultants, when justified, continues to be a viable source of outside support service. However, the need for consultants

can frequently be obviated by alternative resources within the Navy or other DOD organizations.

Recommendations: The contracting officer must be familiar with OMB Bulletin No 78-11 and scrutinize all requests for consultants, especially those of a non-competitive nature. Experience, expertise, and past performance should be considered in competing for consultant services, with emphasis being placed on the success of their implemented ideas or recommendations.

9. Conclusion: The selection of the proper contract type can encourage competition and is one of the most important decisions a contracting officer can make. There are many factors to consider in determining the proper contract type, each of which must be addressed with contracting officer care and concern.

Recommendation: When the specific conditions delineated under Contract Types, Chapter III of this thesis, exist, firm fixed-price or firm fixed-price level of effort contracts should be used. The increased use of two-step formal advertising should be encouraged as well as negotiating for a firm fixed-price contract when adequate specifications and a conclusive statement of work exists. The contracting officer should be innovative in his/her approach in determining the proper contract type as evidenced by the successful ongoing Air Force Space and Missile Systems Organization (SAMSO) contract.

Other considerations may require the use of cost reimbursement contracts,including the Cost-Plus-Award-Fee (CPAF), and the Indefinite Quantity/Labor Hour Contract. The latter must be used with extreme care for, when used incorrectly, it can restrict competition and invite carelessness for both Government and contractor personnel. However, used correctly, the Indefinite Quantity/Labor Hour Contract has many advantages due to its flexibility and reduced administrative burden that can be successfully applied in an uncertain funding environment. Indefinite Quantity/Labor Hour Contracts may also increase competition, make more effective use of Government personnel, and glean the benefits of consolidated procurement as evidenced by an ongoing pilot plan executed and managed by the Naval Air Systems Command (NAVAIR).

10. Conclusion: If the contracting officer focuses his/her expertise and attention on the key aspects of the pre-award phase as identified in this thesis, two major benefits should result. First, effective competition will be accomplished, and second, the success of the pre-award phase will result in more effective and efficient contract award and contract administration phases. Thus, the total contracting effort is enhanced.

Recommendation: The contracting officer should concentrate his/her efforts to the success of the pre-award phase of the contracting process, demanding effective competition where appropriate.

Contribution of Study

It is the purpose and intent that the preceeding discussions surfaced a growing challenge to contracting officers and offered a solid working background for the contracting officer in understanding contractor support services and, in particular, understanding the difficulties associated with competing for these services. Diligent application of this working background to the contracting process should assist the contracting officer in promoting effective competition for contractor support services.

APPENDIX A

The Functions of the Contract Review Board (CRB)

The CRB consists of knowledgeable contracting personnel (including counsel, small business specialists or technical specials) who recommend actions to the contracting officer. Its functions include but are not limited to:

a. weighing justification for sole source

b. considering competitive aspects of the requirement

c. considering application of small business

d. considering urgency and priorities

e. evaluating the kind and nature of work to be done as nonpersonal services

f. ensuring the statement of work is conclusive

g. ensuring the contracting officer's technical representative (COTR) has been approved

h. reviewing for conflict of interest--either kind of work or contractor participation.

APPENDIX B

Examples of Contractor Support Services Thresholds

$ Threshold	Activity
$0-500	Small purchase-no competition required
$500-10,000	Small purchase-competition required
$2,500	Service Contract Act SF 98 to DOL
$10,000-100,000	1) Large purchase - competition required 2) Solicitation and award must be synopsized in Commerce Business Daily (CBD) 3) Contract Review Board (CRB) action 4) Determinations and Findings (D&F) 5) Task or Delivery orders require legal counsel approval 6) Personal vs. Nonpersonal Services questionnaire 7) Evaluation board for RFP's 8) Commanding Officer approval for requirements exceeding 50,000 9) Assignment of Contracting Officer Technical Representative (COTR) 10) Patent Counsel Review.
Over $100,000	Same as the activity enumerated above with the additional requirements: 1) Pre-negotiation and Post-negotiation Business clearance 2) Cost and pricing data for sole source contracts (PL 87-653) 3) Request for Authority to Negotiate (RAN) for Negotiating exception 11 4) Data Manager or Data Requirement Review Board (DRRB) review.

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